

ORIGINAL

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

INT OCT 31 AM 8:32

IN AND FOR THE COUNTY OF YAVAPAI

BY: Jacqueline Marchman CLERK

THE STATE OF ARIZONA,)

Plaintiff,)

vs.)

No. P1300CR2008-1339

STEVEN CARROLL DEMOCKER,)

Defendant.)

BEFORE: THE HONORABLE WARREN R. DARROW
JUDGE PRO TEMPORE OF THE SUPERIOR COURT
DIVISION SIX
YAVAPAI COUNTY, ARIZONA

PRESCOTT, ARIZONA
THURSDAY, SEPTEMBER 9, 2010
9:25 A.M. - 3:50 P.M.

REPORTER'S PARTIAL TRANSCRIPT OF PROCEEDINGS

JURY TRIAL

TESTIMONY OF PAMELA EDGERTON, DEBRA SIMS,

JACQUELINE WHEELER AND JOHN FARMER

ROXANNE E. TARN, CR
Certified Court Reporter
Certificate No. 50808

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1 (Whereupon, the jury enters the courtroom.)

2 THE COURT: On the record in the State of
3 Arizona versus Steven Carroll DeMocker. Mr. DeMocker is
4 present. All of the attorneys are present, and the jury is
5 present. The witness, Detective Edgerton, has resumed the
6 witness stand, and she has previously been sworn.

7 And, Mr. Butner, when you are ready, you
8 may continue with your direct examination.

9 MR. BUTNER: Thank you, Judge.

10 PAMELA EDGERTON,
11 previously called as a witness, having been duly sworn,
12 testified further as follows:

13 DIRECT EXAMINATION RESUMED

14 BY MR. BUTNER:

15 Q. Detective Edgerton, we were talking about items
16 that you had discovered during the course of the search
17 warrant, and you went over to Alpine Meadows and began
18 searching over there; right?

19 A. Yes.

20 Q. And this was -- we were talking about the search
21 warrant that was executed at Alpine Meadows on October 23rd
22 of the year 2008.

23 Do you recall that?

24 A. Yes, I do.

25 Q. That as I recall is Exhibit 801.

1 And, of course, we had been referring to
2 the supplement on 801 that was attached. And if you would
3 refer to this exhibit for your testimony rather than your own
4 file that would probably be the best.

5 And this -- what I am showing you right
6 now -- this portion of Exhibit 801, already admitted into
7 evidence, which recites at Page 1 of 3, et cetera, does that
8 describe the items that you were the finder of and helped
9 seize during the course of the search at Alpine Meadows?

10 A. Yes.

11 Q. Okay. Referring to that, we talked about the two
12 bags of golf clubs that you seized; right?

13 A. Yes, sir.

14 Q. Okay. And then you went from the garage area into
15 the residence; is that correct?

16 A. Correct.

17 Q. And I believe that we were discussing, when we
18 concluded your testimony yesterday, that you had seized items
19 that were indicia of ownership; right?

20 A. That's correct.

21 Q. And Exhibit -- we had that in an envelope, 3109.
22 Let me show you what's now been marked as Exhibit 3255.

23 Do you recognize that particular object?

24 A. Yes, I do.

25 Q. What is that?

1 A. It's an envelope with Mr. Steven DeMocker's name,
2 address.

3 Q. And where did you first see that particular
4 object?

5 A. On the desk in the master bedroom at the Alpine
6 Meadows residence.

7 Q. On October 23rd of the year 2008?

8 A. Yes.

9 Q. You seized it at that time?

10 A. I did.

11 MR. BUTNER: I'd move for the admission of
12 Exhibit No. 3255.

13 THE COURT: May I see it?

14 Go ahead, Mr. Sears.

15 MR. SEARS: No objection.

16 THE COURT: Okay. 3255 is admitted.

17 MR. BUTNER: Thanks, Judge.

18 Q. Okay. After seizing the envelope, did you
19 continue to search in that area?

20 A. Yes, I did.

21 Q. And did you notice anything of evidentiary
22 significance that you located in the area of the desk?

23 A. Well, there's other items of indicia that were
24 seized.

25 Q. Right. And we covered those yesterday in your

1 testimony. And then did you move on to another item or items
2 that you seized in the search?

3 A. Yes, I did.

4 Q. And what was the next series of items that you
5 seized?

6 A. CDs, homemade CDs, that looked like they weren't
7 commercially bought.

8 Q. Okay. And how many of those did you seize in this
9 first seizure for Item No. 3110?

10 A. 3110, there were 32 CDs.

11 Q. And did you find anything -- you submitted those
12 for analysis; right?

13 A. Yes, I did.

14 Q. Was anything of evidentiary significance found to
15 your understanding?

16 A. Not that I was made aware of.

17 Q. Okay. And then in addition to those items, did
18 you find anything else of significance on Mr. DeMocker's desk
19 that you thought might be appropriate for seizure?

20 A. Well, there were other -- there was one more CD.
21 We were collecting any media storage devices. So there was
22 one other CD.

23 Q. What item number was that?

24 A. 3112.

25 Q. And you seized that particular CD also; is that

1 correct?

2 A. Yes.

3 Q. And that was submitted for analysis?

4 A. Yes, sir.

5 Q. To your understanding was anything of evidentiary
6 value found in regard to that CD?

7 MR. SEARS: Hearsay. Foundation.
8 Speculation.

9 MR. BUTNER: Fine. Withdrawn.

10 Q. Moving along to Item 3111, between 3110 and 3112,
11 did you see some other items laying on the desk?

12 A. Yes, I did. There was a --

13 Q. Let me show you what's been marked as Exhibit 2840
14 and Exhibit 28 -- oops, I'm sorry. I thought that was what
15 that was -- okay. What was item 3111?

16 A. It was a paper sack with five more homemade CDs in
17 it.

18 Q. And all of these CDs that you seized pursuant to
19 the search warrant, did you ever find anything of evidentiary
20 value after analysis?

21 MR. SEARS: Foundation --

22 THE WITNESS: Not to my knowledge.

23 MR. SEARS: -- she didn't perform the
24 analysis, Your Honor. Calls for hearsay.

25 THE COURT: Sustained with regard to

1 foundation.

2 MR. BUTNER: I understand, Judge.

3 Q. You didn't analyze any of the CDs; did you?

4 A. No, I did not.

5 Q. You submitted them to the lab for analysis?

6 A. Correct.

7 Q. Okay. And you relied upon what the lab told you?

8 A. Yes.

9 Q. Okay. In addition to the CDs, did you see
10 anything else on Mr. DeMocker's desk?

11 A. Yes, I did.

12 Q. What did you see?

13 A. There were two paperback books, identical
14 paperback books, on the desk. When I first saw them, they
15 were upside down.

16 Q. Okay. I have Exhibits 2841 and 2840 here. I am
17 going to take those out, and would you put them in the
18 position in which you discovered them.

19 A. (Witness complies.)

20 Q. And where were they when you discovered them?

21 A. On the desk. I believe in the upper, right-hand
22 corner.

23 Q. And did you then turn them over and take a look at
24 them?

25 A. Yes.

1 Q. In fact, looking at Exhibits 2840 and 2841, are
2 those the items that you saw there?

3 A. Yes.

4 Q. And so you seized these two paperback books?

5 A. Yes.

6 Q. And what was it about these books that you thought
7 was of evidentiary significance?

8 A. The title of the books appeared to be suspicious.

9 Q. And showing you what's already admitted into -- I
10 thought this was. Let me show you what's been marked as
11 Exhibit No. 523.

12 Do you recognize that?

13 A. Yes. It's the two books.

14 Q. Is it the photograph of the two books?

15 A. Yes, sir.

16 MR. BUTNER: Judge, I move -- I guess I'd move
17 for the admission of the two items. I thought 523 was in
18 evidence. But I'll just move for the admission of Exhibit
19 2840 and 2841.

20 MR. SEARS: No objection.

21 THE COURT: 2840 and 2841 are admitted.

22 BY MR. BUTNER:

23 Q. So you looked through these two books?

24 A. Briefly.

25 Q. And what was it that concerned you about the books

1 that made you think they were of evidentiary value?

2 MR. SEARS: Relevance.

3 THE COURT: Overruled. You may answer if you
4 can.

5 THE WITNESS: The title, *The International*
6 *Fugitive*. And the fact there were two of them, identical,
7 both on the desk. Just appeared to be something that might
8 have been purchased in lieu of flight.

9 BY MR. BUTNER:

10 Q. Okay. Did you have an understanding as to why you
11 were executing a search warrant on October 23rd of the year
12 2008 at Mr. DeMocker's residence?

13 A. Yes.

14 Q. What was your understanding?

15 A. To gather evidence of Mr. DeMocker's possible
16 involvement in the homicide.

17 Q. And did you have an understanding as to why you
18 were doing this on October 23rd of 2008, specifically?

19 A. Not that I recall right now.

20 Q. In going through Mr. DeMocker's residence on
21 October 23rd of the year 2008, did you find any other items
22 of evidentiary value?

23 A. Yes.

24 Q. What?

25 A. Well, moving down the list, the next item that I

1 found, No. 3115, was a new Garmin GPS unit.

2 Q. And when you say "new" what do you mean by that?

3 A. It was still -- it was either in the box or all
4 the packaging was right there with it, as well as a receipt
5 with a date when it was purchased.

6 Q. Let me show you what has been marked as Exhibit
7 No. 3254 for identification purposes. Would you take a look
8 at that.

9 First of all, do you recognize the
10 packaging?

11 A. Yes.

12 Q. When you seized the Item 3115, did you have it
13 marked and placed in sheriff's evidence?

14 A. Yes.

15 Q. And have you actually reviewed this item of
16 evidence? Actually, yesterday?

17 A. Yes, I did.

18 Q. And what does it contain?

19 A. A GPS unit and paperwork, maps -- excuse me,
20 software for maps, different areas to go along with the GPS
21 unit. I believe this has the receipts in it, as well.

22 Q. Would you take a look and make sure, please.

23 A. It has the original packaging. It's repackaged.

24 Q. The original evidence packaging?

25 A. Yes. There are micro cards, other memory storage

1 units, presumably, for the GPS. But they were seized, and
2 they were in the same area as the GPS unit.

3 Q. The object in your hand; what is that?

4 A. That's the GPS.

5 MR. SEARS: Your Honor, I think technically
6 this is not in evidence yet.

7 MR. BUTNER: I'd move for the admission of
8 Exhibit No. 3254 at this time.

9 THE COURT: Mr. Sears?

10 MR. SEARS: As long as we're going to waive it
11 around, I have no objection, Your Honor.

12 THE COURT: 3254 is admitted.

13 MR. BUTNER: And Judge, I have the photograph
14 that we can substitute at a later time marked as Exhibit 524.
15 I'll have the witness identify that at this time.

16 THE COURT: That was my question.

17 Mr. Sears, have you seen the photograph
18 of the items?

19 MR. SEARS: Yes.

20 BY MR. BUTNER:

21 Q. Would you take a look at Exhibit 524.

22 Do you recognize that?

23 A. Yes, I do.

24 Q. Is that a photograph of the items that you seized?

25 A. Yes.

1 MR. BUTNER: Okay. I would move for the
2 admission of 524 at this time.

3 MR. SEARS: No objection.

4 THE COURT: What is that the number again?

5 MR. BUTNER: 524, Judge.

6 THE COURT: Okay. Then 524 is the admitted.

7 BY MR. BUTNER:

8 Q. Okay. Taking a look at those items, were you able
9 to establish -- when I say "those items," I'm referring to
10 Exhibit No. 3254 -- were you able to establish when they were
11 purchased?

12 A. Yes. There were two receipts in there. One was
13 dated 7/24/08, which was for the GPS unit and the software
14 itself. Basically, everything in the package, there's a
15 receipt for 7/24/08.

16 And there's a second receipt for August 9
17 of '08, and that's for just three micro SD cards, which are
18 the little storage cards for the -- presumably for the GPS
19 unit.

20 Q. Okay. So when was the GPS purchased according to
21 the receipts that you found?

22 A. April -- or excuse me -- July 24th, 2008.

23 Q. And then the equipment that helps make the GPS
24 work, for lack of a better way to describe it, when was that
25 purchased?

1 A. On August 9th, 2008.

2 Q. And where specifically were those items located
3 when you seized them?

4 A. On -- it was in a black bag underneath the desk in
5 the master bedroom.

6 MR. SEARS: I'm sorry. I didn't hear that
7 last question and answer, Your Honor.

8 MR. BUTNER: Would you please say that out
9 loud, close to the microphone.

10 MR. SEARS: I didn't hear the question, Your
11 Honor. I'm sorry.

12 THE COURT: Roxanne, could you read that back.
13 (Whereupon, the relevant portion
14 of the record was read back.)

15 THE COURT: Thank you.

16 MR. SEARS: Thank you, Your Honor.

17 BY MR. BUTNER:

18 Q. Going back for a moment to your search at the
19 Bridle Path residence, would you describe how you first
20 entered the residence and what you did at that point in time
21 to familiarize yourself with the scene?

22 MR. SEARS: Foundation as to date, Your Honor.

23 MR. BUTNER: I'll ask it again, Judge.

24 Withdrawn.

25 Q. On July the 3rd of the year 2008, did you go to

1 the Bridle Path residence?

2 A. Yes, I did.

3 Q. And on that date before you began executing the
4 search warrant there, did you in some fashion familiarize
5 yourself with the crime scene and the residence?

6 A. Yes.

7 Q. Would you describe how you did that for us,
8 please.

9 A. When I first arrived and checked into the scene, I
10 walked up towards the house, didn't see anybody. I believe
11 at that time, from memory, I believe I walked in through -- I
12 don't think it would be considered a front door, maybe a side
13 door that opens onto the kitchen area. Walked in there.
14 There still wasn't anybody that I could see in the residence,
15 so I just kind of looked around a little bit there in the
16 kitchen, and then I walked back out, I believe, the kitchen
17 door and around the back because I was still looking for
18 somebody to kind of brief with and find out what we were
19 doing. And that's when I found people on the back porch and
20 talked with them.

21 Q. And then after meeting with the people on the back
22 porch and discussing -- as I recall your prior testimony --
23 discussing how were you going to execute the search
24 warrant; right?

25 A. Yes.

1 Q. Did you walk around the perimeter of the
2 residential building itself, that is, under the porches and
3 along the walls, looking at various things?

4 A. Yes. Somewhat.

5 Q. Okay. And in doing that, did you go to the north
6 side of the house?

7 A. I think you'll have to be more specific. I'm not
8 sure which is north in that area.

9 Q. Thinking back to the Bridle Path residence, you
10 recall the room in which Virginia Carol Kennedy's body was
11 located; right?

12 A. Yes.

13 Q. Okay. Did you go around to the outside door of
14 that room?

15 A. Yes.

16 Q. Did you notice anything of significance when you
17 were there outside the door of the office at Bridle Path, the
18 room in which Virginia Carol Kennedy's body was located?

19 A. The only thing I really saw was there was a
20 reddish stain, just a circle, red stain on the ground right
21 outside the door, which I thought could be blood.

22 Q. And were you there when swabs were taken of that
23 particular stain?

24 A. I believe I was at the residence. I wasn't
25 observing swabs being taken.

1 Q. While you were outside the office door there at
2 Bridle Path, did anybody check to see if that door opened or
3 closed?

4 A. Yes, the door was --

5 Q. When was that?

6 A. I couldn't tell you when.

7 Q. Okay. Well, was anybody inside the door while you
8 were standing outside the door at the office?

9 A. At different times. Do you mean the first time I
10 entered?

11 Q. No. I'm talking about -- at some point in time,
12 did people or some person check the status of that door in
13 your presence to see if it was locked or unlocked?

14 A. I don't recall them doing that in my presence. I
15 was there much later than many of the other detectives.

16 Q. Were you there at the same time that Lieutenant
17 Rhodes was there?

18 A. I remember seeing him there, but I was -- I
19 arrived at the scene about 11:00, I believe. I think
20 everybody else was there much earlier than me.

21 MR. BUTNER: I don't have any further
22 questions of this witness at this time, Judge. Thank you.

23 THE COURT: Thank you, Mr. Butner.

24 Mr. Sears, cross-examination.

25 MR. SEARS: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. SEARS:

Q. Good morning, Detective.

A. Good morning.

Q. Welcome back.

A. Thank you.

Q. I want to talk to you about this piece of desk molding here. I'm not going to take it out right now because I don't want to take the time to put on gloves.

This is the piece of desk molding that you had and you showed the jury, let them inspect it; right?

A. Correct.

Q. Now, on one part of your testimony yesterday, you said, I thought, that you didn't have to move Carol Kennedy's body to pick up this piece of desk molding off the ground.

Is that what you said?

A. I believe that's what I said.

Q. Okay. And then I thought I heard you say later that this piece of desk molding was at least under her hair if not under her head and her upper body when you picked it up.

Is that right?

A. From the pictures, yes, it appears that way.

Q. Okay. So now, looking at the pictures, it's quite likely that you had to, at a minimum, touch the body to take

1 this piece of molding away; correct?

2 A. I remember you asking me if the item was moved --
3 excuse me, removed before or after the body was removed, and
4 I remember telling you I thought it was prior to the body
5 being removed. I'm not positive of that right now, but if
6 that is correct -- if my answer is correct -- I would say it
7 was touching the hair, and it was just removed from
8 underneath the hair.

9 Q. We can get this out if you need to look at it
10 again to refresh your recollection.

11 This piece of desk molding has blood all
12 over it; doesn't it?

13 A. Yes.

14 Q. Okay. This piece of desk molding has some human
15 hairs or some kind of hair stuck to the blood; doesn't it?

16 A. Yes.

17 Q. You could see that. We could all see that;
18 correct?

19 A. Correct.

20 Q. You came over and showed it to us, and we could
21 see that; right?

22 A. Yes.

23 Q. Okay. Now, did you see the hair on that piece of
24 molding on July 3, 2008, when you collected it?

25 A. Probably. I don't have independent memory of it

1 at that time.

2 Q. When you were there at 11:30 or so in the morning,
3 the autopsy of Carol Kennedy hadn't taken place because her
4 body is right there in the room with you; correct?

5 A. At that time, yes.

6 Q. Okay. And you understand that later on that
7 afternoon at the autopsy there was a discussion between the
8 medical examiner, Dr. Keen, and some of your fellow
9 detectives about possible weapons that could have caused
10 these terrible injuries; right?

11 A. Yes.

12 Q. But at the time you collected this piece of desk
13 molding, it could have been a weapon; correct?

14 A. I didn't see it as a weapon, but it could have
15 been.

16 Q. Okay. Well, let's stop and think about what it
17 is. You said, and we looked at photographs yesterday -- but
18 we'd have to set the screen up again to show you -- but you
19 remember the photographs where you could see the place on the
20 desk where this molding should have been?

21 A. Yes.

22 Q. You could see the little pegs -- you called them
23 dowels -- the little pegs in the desk where the molding would
24 have snapped right in place; right?

25 A. Right.

1 Q. And, in fact, one of those little pieces of wood
2 is still embedded in this piece of desk molding; correct?

3 A. Yes.

4 Q. All right. So one of the things I assume that you
5 were thinking about, as a trained detective with all the
6 experience you have, is: Why is that off the desk?

7 A. Well, yes.

8 Q. Okay. Then there could be a lot of explanations;
9 right?

10 A. Yes.

11 Q. One of the explanations could have been it just
12 fell off the desk before anything happened in that room that
13 caused the death of Carol Kennedy; right?

14 A. Possibly.

15 Q. And she just landed on top it of it; correct?

16 A. Yes.

17 Q. But another possibility is that whomever did this
18 to Carol Kennedy could have struck her with that piece of
19 wood; right?

20 A. I guess that's a possibility.

21 Q. Okay. Now Mr. Butner here asked you whether you
22 saw any dents or scratches on that piece of molding; right?

23 A. Yes.

24 Q. Okay. When he asked you that question, were you
25 thinking about whether you saw any scratches yesterday or two

1 years ago?

2 A. I think when he asked me that question is after I
3 already had it in my hand, so I was answering from what I saw
4 right there.

5 Q. Okay. Did you see the injuries to Carol Kennedy's
6 right arm when she was at the scene with you on July 3, 2008?
7 Could you see the injuries to her arm?

8 A. I believe -- I'm trying to remember which side of
9 her body was up -- I believe her right side was up.

10 Everything that was obvious, without
11 moving the body, to be able to be seen I did look over, you
12 know, as much of that body as I could.

13 Q. Did you go to the autopsy?

14 A. No.

15 Q. So you didn't see when she was there for everyone
16 to see the terrible injuries to her head and to her face and
17 to her arm. You didn't see those; right?

18 A. Some of it on her head could be seen, but not to
19 the extent of the autopsy.

20 Q. Have you ever looked at the photographs from her
21 autopsy?

22 A. Yes, I believe I have.

23 Q. Okay. Are you aware that Dr. Keen observed that
24 she had two parallel contusions on her arm, on her forearm
25 that went up towards her elbow? Do you remember those

1 injuries?

2 A. I don't recall it, no.

3 Q. Okay. Let's assume, for purposes of the next
4 question, that she did have those injuries. And we've heard
5 testimony from Dr. Keen and seen these pictures time and
6 again in this case. It is reasonable to assume, isn't it,
7 that those injuries could have been caused by this object,
8 this piece of desk molding. I'm talking about these
9 contusions.

10 MR. BUTNER: Objection. Calls for speculation
11 by this witness. She's already testified she didn't recall
12 any of that, Judge, and she wasn't at the autopsy.

13 THE COURT: Overruled. She may answer that if
14 she can.

15 THE WITNESS: I was going to say I don't like
16 assuming, especially when I don't know the answer for sure.
17 So I don't want to assume and then answer a question based on
18 an assumption.

19 BY MR. SEARS:

20 Q. Okay. Well, I'm going to see if we can talk about
21 something that's a little more concrete.

22 If you were to lay your arm on that bench
23 there and I were to take this piece of desk molding and hit
24 you with it, it might leave a mark; right?

25 MR. BUTNER: Objection. Relevance.

1 THE COURT: Overruled. You may answer that.

2 THE WITNESS: I would imagine.

3 BY MR. SEARS:

4 Q. And if I hit you very hard with it, it might leave
5 a very deep, permanent mark; right?

6 A. Permanent -- well, maybe if you broke the bone or
7 something. I'm not sure.

8 Q. A mark that would last more than a few minutes;
9 right?

10 A. Probably, yes.

11 Q. Would be visible sometime later on the same day;
12 correct?

13 A. Yes. Depending on how hard you hit.

14 Q. Okay. And if I hit you twice, I might leave two
15 marks; right?

16 A. Possibly.

17 Q. Okay. And do you remember how this object, this
18 piece of desk molding, was shaped?

19 A. Yes.

20 Q. Okay. And it had a rounded corner, and that would
21 be the corner that was on the edge of the desk -- I'm
22 pointing to this file cabinet here -- the rounded part would
23 be out here; right?

24 A. Yes.

25 Q. But then it had sharper edges, which would have

1 been the part that -- I'm having a difficult time describing
2 this -- this would be sometimes described as a partially
3 round piece of wood, and it's square on the backside.

4 Is that a fair description?

5 A. I remember what it looked like. I'm not really
6 following your description.

7 Q. Okay. There were sharp edges; right?

8 A. On the insides, yes.

9 Q. On the inside. Right. Okay.

10 And those might cause a different kind of
11 mark on a person's arm if the person were struck with those
12 edges; correct?

13 A. Yes. Possibly.

14 Q. Okay. This piece of molding here -- let me see
15 what the final exhibit number was. Looks like it might be
16 3251 in evidence, which is the actual piece of molding here.

17 This has some "heft" to it. H-E-F-T,
18 heft; right?

19 A. Somewhat. Yes.

20 Q. Okay. It's not so flimsy that you would expect it
21 to shatter if somebody was struck with it?

22 A. That's correct.

23 Q. Okay. Do you know what a "linear" object is when
24 a pathologist and medical people are talking about linear
25 objects? Do you have some sense of what that is?

1 A. I know linear comes from line.

2 Q. Okay. Would you think that this is an example --
3 this being 3251 -- is an example of a linear object?

4 A. Yes.

5 Q. Okay. As you sit here now, if you need to take a
6 moment and think about it, can you recall, looking back at
7 July 3, 2008, whether you picked up that piece of molding,
8 3251, after Carol Kennedy's body had been removed or while it
9 was still there?

10 MR. BUTNER: Objection. Asked and answered.

11 THE COURT: Overruled. You may answer that.

12 THE WITNESS: I just don't recall. I know
13 there are times when the autopsy started. Times, probably,
14 when the body was removed. There were times when the object
15 was seized, and I know what time the object was seized. I
16 don't know the times of those other events.

17 BY MR. SEARS:

18 Q. What time was the object seized?

19 Are you looking at Exhibit 801?

20 A. Actually, yeah. This one wouldn't have the --
21 this is just the Alpine Meadows, so I have it in my own file.

22 Q. Take a minute and find that for me; would you
23 please.

24 A. That Item No. 506, the desk trim, was seized at
25 14:39, 2:39 in the afternoon.

1 Q. Okay. If I told you that other witnesses
2 including your colleague, Detective Jaramillo, said that the
3 body was put in a body bag and removed to go to the autopsy
4 shortly before 1:00 p.m., does that help you remember whether
5 the body was there?

6 What did you say, 2:29?

7 A. 2:39.

8 Q. 2:39.

9 Was the body gone, then?

10 A. Yes. It would have been gone.

11 Q. Okay. So now looking back and looking at your
12 notes, when you took that piece of desk molding, Carol
13 Kennedy was gone; right?

14 A. That's correct.

15 Q. Now, there was, in the photograph you saw and the
16 photograph that we've all seen here a number of times now, a
17 white plastic bottle with a red cap on it very near that
18 piece of desk molding; right?

19 A. Yes.

20 Q. What was that?

21 A. Since looking at the pictures, it was just a small
22 plastic bottle of pet odor remover. Like carpet cleaner.

23 Q. Okay. And that had blood all over it; right?

24 A. Yes.

25 Q. Okay. And it was very near the top of Carol

1 Kennedy's body, near her arm and her head; right?

2 A. Yes.

3 Q. You didn't take that?

4 A. No.

5 Q. Now you said you had hundreds of hours of training
6 in various aspects of investigation and police work; right?

7 A. Yes.

8 Q. Somewhere in those hundreds of hours was it ever
9 suggested that when you were collecting evidence at a murder
10 scene that it's a good idea to take objects next to or
11 touching the victim's body, particularly if they are covered
12 with blood?

13 A. I don't recall if that specifically has ever been
14 said. It seems reasonable, but I don't recall.

15 Q. Now, let's think about this white plastic bottle.
16 She's not laying on top of the bottle. We've seen the
17 pictures; right?

18 A. Correct.

19 Q. But it's got blood all the way around it; right?

20 A. Definitely blood on it. I didn't say it was all
21 the way around it.

22 Q. Well, how did that blood get there?

23 A. I don't know.

24 Q. Would it be reasonable to assume that at one time
25 the victim was lying on that white plastic bottle?

1 A. I couldn't say. I don't recall what the blood
2 looked like now from, you know, two years ago.

3 Q. Well, we'll get some photographs out here in a bit
4 and look at those photographs.

5 We talked about the hair on the piece of
6 desk molding, and we talked about the blood on the bottle.

7 You do remember the blood on the bottle;
8 right?

9 A. Yes.

10 Q. That it had blood. You just can't picture what
11 the blood looked like?

12 A. Correct.

13 Q. You know from your experience and being at crime
14 scenes that fingerprints, latent fingerprints, are sometimes
15 discoverable in human blood; correct?

16 A. Yes.

17 Q. And it's different than touching blood and then
18 touching some other surface and leaving a bloody fingerprint.
19 I'm talking about a fingerprint and an actual bloody surface.
20 Just a fingerprint or a palm print; right?

21 A. I'm not sure I understand the question.

22 Q. Okay. I'm talking about a fingerprint on the
23 blood itself.

24 Have you ever seen that?

25 A. Possibly. I don't really recall.

1 Q. Okay. So who made the request for scientific
2 examination on that piece of molding, 3251? Did you do it?

3 A. No, I don't believe I did that personally.
4 Probably was the case agent.

5 Q. It would have made sense to process that piece of
6 molding for blood; correct? To see if that's blood or
7 something else; right? That would be one test you would
8 think would be logical; right?

9 A. Probably.

10 Q. Wouldn't it make sense to see whose blood it might
11 be by looking for DNA; correct?

12 A. Possibly. But it seemed obvious at the time.

13 Q. Well, that's an interesting point. Let's go there
14 for a minute. There's blood everywhere on this lady, under
15 this lady, on the desk. We've seen these pictures now many,
16 many times; right?

17 A. Yes.

18 Q. Can you say as you sit here today that all of that
19 blood was Carol Kennedy's?

20 A. No.

21 Q. When you say it's reasonable to assume, that's
22 what you're thinking of that it's probably her blood; right?

23 A. Just given the amount of blood and on her and in
24 the room, yes.

25 Q. Just looking at blood as a trained detective, when

1 you see blood in the area, you can't tell whose blood that is
2 just by looking at it; can you?

3 A. Correct.

4 Q. Okay. It has to be tested and analyzed; right?

5 A. Yes.

6 Q. Okay. And you don't know, I assume on July 3,
7 2008, exactly how this woman died; right?

8 A. Correct.

9 Q. You don't know how many people attacked her;
10 right?

11 A. Correct.

12 Q. You don't know what they were using to injure her;
13 right?

14 A. That's correct.

15 Q. And you don't know whether they got cut and bled;
16 right?

17 A. That's correct.

18 Q. So some of that blood someplace in that room could
19 have been blood from the person or persons that did this;
20 right?

21 A. It is possible.

22 Q. Were the DPS criminalists in that room with you at
23 anytime?

24 A. They were, I believe. Now, I better not guess at
25 that. They definitely were in the room at the same time that

1 I was.

2 Q. Did you know them?

3 A. I had met at least one of them before.

4 Q. Which one?

5 A. Kortney.

6 Q. Kortney Snider?

7 A. Yes.

8 Q. Okay. What was Kortney Snider doing when you were
9 there?

10 A. I know she was swabbing, but, like I said, I'm not
11 sure she was swabbing at the same time I was picking up
12 evidence or if possibly I picked up -- we picked up all of
13 our evidence and then she swabbed afterwards.

14 Q. Nobody from the Yavapai County Sheriff's Office
15 was doing any swabbing for blood or other evidence in that
16 room while you were there; right?

17 A. I didn't. I don't believe so. I believe DPS did
18 all of that.

19 Q. That's why they came down; right?

20 A. I believe so.

21 Q. And who was collecting hair? Did you see anybody
22 collect hair?

23 A. I didn't.

24 Q. Who was doing fingerprint lifts? Anybody? In
25 that -- I'm just talking about the room where the body was.

1 A. I didn't see anybody doing fingerprints while I
2 was there.

3 Q. Okay. So if this piece of molding, for example,
4 could have been a weapon -- I mean, I know you said you
5 didn't think of it, but as you sit here now, looking back, it
6 could have been; right?

7 A. It could have been.

8 Q. Okay. Would it have made sense to suggest to
9 somebody that they process this for blood, DNA, fingerprints
10 and hair? These are all items of forensic evidence that
11 might be contained on this one item; right?

12 A. Yes.

13 Q. Do you know what happened to the analysis of this
14 item, 3251, this piece of molding?

15 A. I don't.

16 Q. Okay. I think other people will tell us.

17 Next to that white plastic bottle there
18 was a red rubber ball.

19 Do you remember that?

20 A. I don't recall that.

21 Q. Okay. If I showed you a photograph, would that
22 help you remember?

23 A. Probably.

24 Q. We'll get that photograph out, and we'll take a
25 look at it in awhile.

1 Did you see blood on that? Well, you
2 didn't see the ball, so you don't know if you saw blood on
3 it; right?

4 A. Correct.

5 Q. We've had some questions about people who saw
6 something or something they didn't see. Let me show you
7 32 -- I'm sorry, 2325. This is in evidence.

8 You've been to this place, right, on
9 July 3, 2008?

10 A. "This place" meaning the --

11 Q. The place in the photograph.

12 A. Yes.

13 Q. Okay. And I'm not going to take the time now to
14 set up the screen, but you can see Carol Kennedy's head in
15 that photograph; can you not?

16 A. It appears the top of her head, yes.

17 Q. And you can see the white plastic bottle we just
18 spoke about; right?

19 A. Yes.

20 Q. And you can see the red rubber ball; right?

21 A. Yes.

22 Q. Okay. You didn't collect the red rubber ball,
23 either?

24 A. I did not.

25 Q. Okay. We'll see that in just a moment.

1 Do you see any evidence that that red
2 rubber ball has blood on it, from this photograph, 2325?

3 A. From this photograph I can't specifically see it,
4 no.

5 Q. It would have made sense to pick it up and look at
6 it; right? It's maybe six inches from Carol Kennedy's head?

7 A. Six inches to a foot, possibly.

8 Q. Six inches to a foot. Is that right?

9 And in this photograph, 2325, you can see
10 that piece of corner molding, just the end of it; right?

11 A. Yes.

12 Q. Looks like her head's lying right on top of it,
13 doesn't it, in this photograph?

14 A. It's tough to tell in this photograph. It's
15 definitely -- the hair is definitely touching it. It's hard
16 to tell whether the head is or not.

17 MR. BUTNER: Could I see that please,
18 Mr. Sears?

19 Thank you.

20 BY MR. SEARS:

21 Q. Was there anything else under the victim's body
22 that you collected after the body was removed? You could see
23 where the body was; right? You could see the blood?

24 A. No.

25 Q. No, you couldn't see it or no, you collected

1 nothing?

2 A. No, I did not collect anything else underneath the
3 body once it was removed.

4 Q. Okay. Tell me about this checkbook cover that was
5 next to the body. What did you see on that?

6 A. It just appeared to be a white checkbook cover.
7 Possibly plastic or Naugahyde, something like that. And it
8 appeared to be empty.

9 Q. Did you open it up and look at it?

10 A. I'm sure I did on scene once I picked it up.

11 Q. So there was nothing inside of it. It was just
12 the cover?

13 A. There was nothing in the middle where checks would
14 generally be. There may have been things in the -- the
15 pockets, the plastic pockets on the inside.

16 Q. Did you seize any blank checks or deposit slips
17 from that room that day?

18 A. I don't believe I did. I'm almost certain I did
19 not.

20 Q. Okay. Do you have all of the supplements for that
21 search in your records there?

22 A. Yes. I think I do.

23 Q. Can you take a minute and look through them and
24 see if you see any checks or check deposit slips among the
25 items seized pursuant to the warrant on July 3, 2008, at the

1 Bridle Path location.

2 A. (Whereupon, the witness reviews a document.)

3 Going through them quickly, I do not see
4 any checks or check --

5 Q. Deposit slips --

6 A. -- deposit slips.

7 Q. -- for a checking account?

8 A. Correct.

9 Q. Okay. As being taken?

10 A. Correct.

11 Q. Okay. But on the desk -- let me show you 3043 in
12 evidence. This is one I think, actually, we can put up on
13 the ELMO so we can all look at it. We have to wake this up
14 here this morning.

15 I'm going to show you 3043 in evidence.
16 You recognize this as the desk in the room at Bridle Path
17 where you were collecting and seizing items pursuant to the
18 search warrant; right?

19 A. Yes.

20 Q. And you told us and we've seen this, this desk
21 calendar was taken; right?

22 A. Yes.

23 Q. Primarily because it had blood spots on it; right?

24 A. I believe that was the majority of the reason that
25 I'd want to take that.

1 Q. Okay. And as opposed to smeared blood or spatter
2 blood, these are drops of blood; correct?

3 A. There's one drop of blood, right there, by the
4 number four, that looked like a straight down drop. And
5 there's another one at five, which is a little bit thicker, a
6 little bit harder to tell. And, then, the rest of them all
7 towards the left appear to be spatter.

8 Q. Okay. We can see spatter on a number of other
9 items, on these papers here, on these papers here, and on
10 this item.

11 Is there spatter near this item? Is that
12 a drop of blood right there or is that a defect in the wood?

13 A. It's hard to tell from here.

14 Q. Okay. Let's go in a little closer without losing
15 resolution.

16 What's this object here on the desk?
17 What's this?

18 A. It appears to be a coupon.

19 Q. Okay. If I told you that's actually a cashier's
20 check, does that look like a cashier's check?

21 A. The green and blue one?

22 Q. No, this.

23 A. Oh, that looks more like a check, I'm sorry.

24 Q. Okay. That was never seized; was it?

25 A. Not to my knowledge.

1 Q. Okay. Who's it payable to?

2 A. I couldn't say.

3 Q. Okay. How much is it for?

4 A. Maybe your eyes are better than mine. I can't
5 see.

6 Q. I'm sure they're not.

7 Okay. You can't read it here on this. I
8 can tell you if you look at the photograph it's no help
9 either because it's smaller than that.

10 So you have no recollection of any of the
11 details of this cashier's check; correct?

12 A. Off the top of my head, independently, no, I
13 don't.

14 Q. Why didn't you take that?

15 A. It didn't appear to have any bearing on the
16 decedent.

17 Q. Okay. You took other documents that you thought
18 independently might be connected to this; right? You took
19 the envelope full of documents with e-mails and other things.
20 You were looking through things on the desk to see if they
21 fit the search warrant; right?

22 A. Yeah, well, I looked through everything.

23 Q. Okay. Now at this point, you didn't know whether
24 this was a burglary gone bad; right? This could have been a
25 burglary gone bad?

1 A. Yes. We didn't know what we had.

2 Q. Okay. And here's a check, a cashier's check, in
3 specific, on the desk and you just left it there?

4 A. Yes. I didn't -- whoever it was made out to, I
5 know at the time I looked at it and saw the amount and the
6 name, and whoever it was did not appear to be -- possibly it
7 was Carol herself, and therefore, it wasn't necessarily, you
8 know, something that looked germane to the case itself.

9 Q. That was your call?

10 A. Yes.

11 Q. So this check never got collected by the police as
12 far as you know?

13 A. As far as I know, no.

14 Q. Let me show you 2281 in evidence. This is one
15 that would require us to put the screen up, but I'm not going
16 to do that now.

17 Do you see the checkbook cover in that
18 photograph?

19 A. Yes.

20 Q. Okay. And it appears to have blood on it; right?

21 A. Yes.

22 Q. Okay. Did it have finger -- latent fingerprints
23 that were visible to you on it?

24 A. Not to my knowledge.

25 Q. What's it doing there?

1 A. That was a mystery.

2 Q. Okay. Do you know whose blood that is?

3 A. I can only assume.

4 Q. You would think it was hers, but it might not be;
5 right?

6 A. Correct.

7 Q. But it might have fingerprints on it; right?

8 A. Since I collected it, I know I looked at it, and
9 if it appeared to have some kind of fingerprint evidence, I
10 am sure I would have pointed that out to the case agent, or,
11 you know, made sure that we looked at that for fingerprint
12 evidence.

13 Q. We understand that not all latent fingerprints are
14 visible to the naked eye; correct?

15 A. I'm not an evidence technician, but I would say
16 that on windows and rough surfaces, yes, that you wouldn't be
17 able to see them.

18 Q. So there might be a fingerprint, a latent
19 fingerprint, on this checkbook cover that you just could not
20 see without the aid of some technique; right?

21 A. Probably, yes.

22 Q. Okay. Did you ask anybody to be sure to process
23 that checkbook cover for latent fingerprints?

24 A. No. I wasn't -- I was assisting on the search
25 warrant. It wasn't really my case or my decision to make.

1 Q. Somebody else's job?

2 A. Yes. In this case.

3 Q. Let me show you 517. We're going to move now to
4 October 23, 2008.

5 You told us that was a bag of golf clubs
6 that you seized out of Mr. DeMocker's garage at his
7 condominium; right?

8 A. Yes.

9 Q. Okay. There was a companion photo that showed a
10 couple of those clubs with headcovers on them; right?

11 A. Not these clubs, specifically. I believe -- I
12 think it was the other set.

13 Q. Another bag?

14 A. Yes.

15 Q. Now. So there are no headcovers on the "woods" in
16 that bag; right? At all?

17 A. Correct.

18 Q. And the other bag had a number of woods with
19 headcovers but not all of the woods. Some had them and some
20 didn't; right?

21 A. I think there were two. I'm not sure. There were
22 some. I would say two, at the most three.

23 Q. We'll pull that other photo up.

24 Do you remember whether all the woods in
25 the other bag had headcovers?

1 A. I don't. I'm not a golfer, so I'm not sure how
2 many woods are supposed to be there.

3 Q. Okay. Well, I'm not asking about how many woods.
4 I'm asking about which ones had headcovers. You do know what
5 a headcover is; right?

6 A. Yes.

7 Q. It's a sock that goes over the --

8 A. Yes.

9 Q. -- the thing.

10 And let me show you 516 in evidence.
11 This is the other bag, is it not?

12 A. Yes.

13 Q. Okay. How many headcovers do you see in that
14 picture?

15 A. I believe there -- it looks to be two, unless
16 there's some hidden down below.

17 Q. You see these two clubs here. Are those wood-like
18 clubs?

19 A. Yes, sir. I think so.

20 Q. Okay. Do they have headcovers on them?

21 A. No.

22 Q. Where were the headcovers for those two clubs?

23 A. I don't know.

24 Q. Did you ever look for them?

25 A. I don't know that I specifically looked for

1 headcovers.

2 Q. You knew by October 23 that the question of a
3 headcover was of considerable interest to the Yavapai County
4 Sheriff's Office in this case; right?

5 A. I knew that that had come up. And -- I want to
6 think. I knew that that issue had come up. I don't recall
7 now whether it was prior to the October 23rd search warrant
8 or after.

9 Q. Okay. If I told you that the sheriff's
10 department's interest in headcovers began actually on the day
11 you were involved in this case on July 3, 2008, at the
12 autopsy. Is that information that you learned later?

13 A. That they were interested in headcovers at the
14 autopsy?

15 Q. They started thinking about a golf headcover they
16 had seen at Alpine Meadows when you were there?

17 A. When I was where?

18 Q. Alpine Meadows.

19 A. I don't understand the question.

20 Q. Let me back up. You were only at Bridle Path on
21 July 3; right?

22 A. Yes.

23 Q. And the first time you went to Alpine Meadows was
24 October 23; right?

25 A. Correct.

1 Q. And you saw these golf clubs with the headcovers;
2 right?

3 A. Correct.

4 Q. Did you learn sometime between July 3 and October
5 23 that the sheriff's department had seen a headcover at
6 Alpine Meadows on July 3 and went to look for it?

7 A. Like I said, I know that it had become an issue.
8 There was some missing headcover. I can only assume, and
9 I'll get in trouble if I do that, I don't know whether it was
10 before that -- my search warrant, or not because there was
11 several search warrants that I did not attend.

12 Q. Okay. Did you do any significant work on this
13 case between July 3 and October 23, 2008?

14 A. No.

15 Q. Mr. Butner was trying to help you remember that
16 the importance of October 23, 2008, was that was the date
17 that Steve DeMocker was arrested. Do you remember that now?

18 A. No.

19 Q. Were you aware when you were on the team executing
20 the search warrant at his house was that he was being
21 arrested in Phoenix that very day?

22 A. Now that you mention it, possibly I remember that,
23 but I can't say for sure.

24 Q. Okay. You were just asked to help and off you
25 went; right?

1 A. Yes.

2 Q. Okay. And these books that we have here, these
3 books that are on the corner of the bench up there, these
4 flight books; right, who told you those might be connected to
5 this case?

6 A. Nobody. I was searching the desk area and saw
7 those and thought they were -- could be connected.

8 Q. Did you think this GPS unit was somehow connected
9 to those books?

10 A. I guess in looking at the book and knowing that
11 Mr. DeMocker was a suspect and then finding the GPS unit, it
12 all kind of fit together that maybe he was looking at fleeing
13 and doing research.

14 Q. And using that GPS unit to escape?

15 A. Be able to find his way in different places.

16 Q. Okay. That GPS unit was three months old; right?
17 On October 23, it had been purchased almost exactly three
18 months earlier; right?

19 A. Yes.

20 Q. And it was still with or in the box that it came
21 in; right?

22 A. Yes.

23 Q. And it was in a bag under his desk; right?

24 A. Yes.

25 Q. Wasn't hidden; right?

1 A. No.

2 Q. And it wasn't in a car; correct?

3 A. No.

4 Q. It wasn't on a motorcycle?

5 A. No.

6 Q. It wasn't with him in Phoenix; right?

7 A. No. It was in the room.

8 Q. Had it ever been used?

9 A. I don't know.

10 Q. Did you make any effort to investigate it to see
11 if it had been used?

12 A. No. I didn't.

13 Q. Okay. There are plenty of uses for a GPS unit;
14 right?

15 A. I assume so.

16 Q. Do you have one?

17 A. No.

18 Q. Okay. They can be purchased by anyone; right?

19 A. I believe so, yes.

20 Q. Okay. Do police cars have them?

21 A. I have been told they're on our cars. I don't
22 know if that's true.

23 Q. Not the cars they give you?

24 A. The cars that we drive at work.

25 Q. So there are lots of reasons people have GPS

1 units, including just a desire to find where they're going;
2 right?

3 A. Yes.

4 Q. Not every GPS unit is used for somebody fleeing
5 prosecution for murder; right?

6 A. That's correct.

7 Q. Okay. Now, did you read those books?

8 A. No.

9 Q. Have you ever read them?

10 A. No.

11 Q. Okay. Just the title interested you; right?

12 A. Yes.

13 Q. If I told that you Mr. DeMocker was arrested on
14 the day that you were searching his home up here in Prescott
15 at his office in Phoenix, do you know that now?

16 A. I vaguely remember. I know that he was arrested.
17 I vaguely remember that it was not in the Prescott area.

18 Q. Okay. You don't know where he was arrested?

19 A. I don't.

20 Q. Okay. And he didn't have those *International*
21 *Fugitive* books with him, apparently; right, because you were
22 taking them off his desk; right?

23 A. If he was arrested at that time, yes.

24 Q. They were just out on his desk; right? They're
25 not hidden anywhere; right?

1 A. Just upside down.

2 Q. Are they marked up in anyway?

3 A. Marked, meaning like highlighted or something?

4 Q. Highlighted them or dog-eared any pages?

5 A. I would have to look through it to see.

6 Q. Take a minute.

7 A. (Whereupon, the witness reviews a document.)

8 It doesn't appear so.

9 Q. Okay. Can you tell from looking at those two
10 objects whether they've ever even been read by anybody?

11 A. It is hard to say, no.

12 Q. The spines aren't broken down?

13 A. It doesn't appear so.

14 Q. They look like new books?

15 A. Yes.

16 Q. And there are two of them, two identical books?

17 A. Yes.

18 Q. Okay. And you said you couldn't tell if the GPS
19 had been used or not; right?

20 A. Correct.

21 Q. And tell me again, it was in a bag. What kind of
22 bag?

23 A. I don't recall. It was a black -- I know it was a
24 black bag sitting on the floor under the desk.

25 Q. Was it a shopping bag?

1 A. No. I don't believe so.

2 Q. Did it have any company name or logo on it?

3 A. I don't know.

4 Q. Or was it a camping-type bag? Was it something
5 with a drawstring?

6 A. I just don't remember. I'm sorry.

7 Q. Reason why you didn't take the bag?

8 A. Just because the bag itself wasn't necessarily
9 suspicious, I guess, but the contents could be.

10 Q. Or might not be?

11 A. Correct.

12 Q. It might be just a GPS unit for somebody that
13 wanted to know where they were going; right?

14 A. Possibly.

15 Q. And they might have nothing to do with those
16 books; right?

17 A. Possibly.

18 Q. But you thought it was something worth taking?

19 A. Totality of the circumstances.

20 Q. Okay. Tell me about where they were hidden under
21 the desk. Was this hidden under the desk?

22 A. I wouldn't say it was hidden, no. Just sitting
23 under the desk. It was a very large desk.

24 Q. On the floor?

25 A. Yes.

1 Q. Was there anything else around it?

2 A. I don't recall.

3 Q. Was it covered by anything? "It" being the bag
4 with the GPS unit in it.

5 A. Not to my knowledge.

6 Q. Did you find any similar devices at the Alpine
7 Meadows condominium that day, similar to the GPS unit?

8 A. Not to my knowledge.

9 Q. Were there any vehicles there?

10 A. Yes. At least one.

11 Q. Did it have GPS in it?

12 A. Not to my knowledge.

13 Q. Okay. Can you tell from looking at that GPS unit
14 how it was intended to be used?

15 A. No.

16 Q. You can't tell if it's the kind of GPS unit that
17 you can put on your dashboard?

18 A. It's got a belt carrier on the back. I suppose if
19 you had --

20 Q. It's a hand-held.

21 A. -- a base you could put it, you know, on the dash.

22 Q. You know what I'm talking about, the GPS units
23 that can go on automobiles, where they are larger and they
24 sit on a little beanbag base. Have you ever seen those?

25 A. I've seen some units in cars, yes.

1 Q. Okay. This might be -- would you consider this to
2 be a hand-held unit?

3 A. It looks more like a hand or belt.

4 Q. And it's got some kind of a hook on the back,
5 maybe could be used on a belt?

6 A. Yes.

7 Q. Okay. And it probably could just be set in a car;
8 right?

9 A. Could be, yes.

10 Q. Much experience with GPS units?

11 A. No, sir.

12 Q. The other places, there's some software there,
13 some maps of various locations; right?

14 A. Software, mapping software, yes.

15 Q. For what locations?

16 A. North America, I know was one of them.

17 Q. Okay. Is that one of the ones that came with it,
18 or was that ordered separately?

19 A. There's no indication that anything was ordered
20 separately, other than the micro SD cards.

21 Q. Okay.

22 A. It looks like topography maps and, then, city
23 navigation, trip and way-point. I'm not sure what this one
24 is. It says, "Garmin BMW." The unit itself, I guess.
25 This -- the one says "Topo U.S. 2008." It's kind of -- it

1 doesn't look brand new like the rest of them, so I'm not sure
2 if this came with -- it was with everything else when I found
3 it, but I don't know if it was -- all came with the unit.

4 Q. Did you find software, mapping software for
5 Mexico?

6 A. Not to my knowledge, no.

7 Q. Do you know whether that's the kind of unit that
8 comes pre-loaded, for example, with North American maps?

9 A. I don't.

10 Q. You just don't know anything about it?

11 A. No, sir.

12 Q. Okay. But there are North American maps,
13 apparently, that are available that could be put on that
14 unit; right?

15 A. I imagine there are maps of anywhere that could be
16 put on it.

17 Q. If you had a GPS unit and it didn't have any maps
18 on it, it would be of very little use; right?

19 A. I guess that's the way they work.

20 Q. Okay. And having maps of North America where we
21 all live would be pretty logical; right?

22 A. I'm not sure I'm qualified. I don't have any
23 experience with GPS, so I don't really know how to answer
24 those questions.

25 Q. If Santa Clause were to give you a GPS unit this

1 year and you were going to learn how to use it, wouldn't you
2 want maps of the places that you would go?

3 A. I don't know why Santa would give me one of those,
4 but I guess so.

5 Q. Or would you re-gift it to somebody who really
6 wanted it?

7 A. I might do that.

8 MR. SEARS: Your Honor, this would be a good
9 time to take a break.

10 THE COURT: Thank you, Mr. Sears.

11 Ladies and Gentlemen, we will take the
12 morning recess at this time. Remember the admonition.

13 I want to mention the preliminary
14 instructions and also your notes. Please do not take notes
15 on the preliminary instructions, because as Judge -- well,
16 Judge Lindberg, took them after they were read, I guess. But
17 in any event, they will be collected before you get the final
18 instructions, so you need to not take notes on those because
19 they will be collected, and you need to keep them in the
20 courthouse here. If you don't have them today, they need to
21 be here because they will be collected, and I am going to
22 make sure of that. You will be able to review the
23 preliminary instructions and your notes during the noon
24 recess, and that will either be in the jury room, or if
25 available, the courtroom here. And you need to check with

1 Phil about that, but that is where that can take place. I
2 just wanted to mention that to you.

3 But remember this also, if you do choose
4 to read the preliminary instructions and look at your notes
5 during the lunch recess, you just can't be associating with
6 anybody else, a juror or anybody else at that time. You have
7 to keep that completely to yourself.

8 So remember the admonition, and please be
9 assembled at 15 till. Thank you.

10 (Whereupon, the jury exits the courtroom.)

11 (Whereupon, a recess was taken.)

12 (Whereupon, the jury enters the courtroom.)

13 THE COURT: The record will show the presence
14 of the defendant, all of the attorneys and the jury. The
15 witness, Detective Edgerton, is on the witness stand.

16 Mr. Sears, you may continue.

17 MR. SEARS: Thank you, Your Honor.

18 CROSS-EXAMINATION RESUMED

19 BY MR. SEARS:

20 Q. Let me show you here on the screen, Detective,
21 2281 in evidence. If you need to step down to take a look at
22 this from a better angle, please feel free, Detective.

23 You recognize this is a photograph that
24 you and I were looking at earlier today; correct?

25 A. Yes.

1 Q. Okay. I'm pointing here with the laser pointer,
2 the white checkbook cover that you took pursuant to the
3 search warrant on July 3, 2008; right?

4 A. Yes.

5 Q. And I assume, then, because you were in that area,
6 you saw what appears to be a bloody handprint on the carpet
7 just a few inches away from the checkbook cover; right?

8 A. In the picture there seems to be a discoloration.
9 I don't recall -- I don't recall seeing a bloody handprint.

10 Q. Well, I didn't say it was a bloody handprint. I
11 said it was something that might appear to be.

12 Let me show you 2281 up close. It's much
13 easier to see when you're looking at it and not projected on
14 the overhead.

15 A. Yes. It does appear to be a bloody, smudge of
16 some kind, yes.

17 Q. Something. Okay.

18 Let's talk about ways to collect it. I
19 assume that in your experience and training from time to time
20 you have had occasion to see possible evidence on carpeting;
21 correct?

22 A. Yes, sir.

23 Q. Okay. And somebody, if not you, probably had some
24 sort of a knife or some object that you could use to cut out
25 a square of carpeting; right?

1 A. Yes.

2 Q. Okay. Can you think of another way to try and
3 preserve whatever this discoloration turned out to be other
4 than cutting it out and taking it with you?

5 A. Pictures, maybe clipping some of the fibers of the
6 carpet.

7 Q. Okay. Now, let's think about what this might be.
8 Okay. And again, it's terribly difficult up here on the
9 overhead to see much of anything.

10 You can see that it's a pattern, can't
11 you, some kind of a shape; right?

12 A. It appears -- it looks from the picture close up
13 -- it looks just to be a smudge. I can't really tell if
14 there's any delineation line, that kind of thing.

15 Q. Okay. None of us in the room were there when this
16 picture was taken other than you. You were in this vicinity
17 at or about the time this picture was taken; right?

18 A. Yes.

19 Q. Okay. Because at some point you took this
20 checkbook cover into evidence; right?

21 A. Yes.

22 Q. Okay. Now, let's think about the possible
23 significance of this stain. Let's suppose for a moment that
24 it actually is a bloody handprint. Okay. Just work with me
25 on this. Just assume it's a bloody handprint. I'm not

1 asking you to agree, just assume, okay?

2 A. I can't assume.

3 Q. Okay. Hypothetically, if this were a bloody
4 handprint, it could be significant in this case; couldn't it?

5 A. Yes. I guess so.

6 Q. Okay. It could be Carol Kennedy's handprint;
7 correct?

8 A. If it were a handprint, I guess it could be, yes.

9 Q. Again, I'm asking you to assume just for purposes
10 of these questions that that's a bloody handprint.

11 Can you do that?

12 A. I hate to answer questions based on assumption
13 that I really can't say, "is this correct."

14 Q. You understand the concept of a hypothetical
15 question; right?

16 A. Yes. But that's dangerous on the stand.

17 Q. Well, believe me, we're just trying to get at what
18 happened in this case. Nobody's trying to cause any danger
19 here. If you feel in danger, let me know and I will stop.
20 Okay.

21 Let's assume that this stain or
22 discoloration of carpet could have been cut out and taken to
23 the lab. Have you ever done that before?

24 A. I have been in searches where pieces of something,
25 not necessarily carpet, but pieces of things have been

1 removed.

2 Q. There would be nothing inappropriate in your
3 experience and training about cutting out a piece of carpet
4 to try and preserve some stain evidence on it, correct, for
5 later interpretation?

6 A. Well, inappropriate, weighing, you know, the
7 evidentiary value based on destroying.

8 Q. Okay. This carpet was covered with blood. You
9 saw what it looked like after Carol was removed; right?

10 A. Yes.

11 Q. In your opinion that carpet was never going to be
12 able to be used again; correct?

13 A. I don't know. I probably wouldn't have.

14 Q. Probably would not have?

15 A. Not in my house.

16 Q. No. It had human blood all over it; correct?

17 A. Yes.

18 Q. So at a minimum there is the problem caused by
19 large amounts of blood stain in the carpet; odor, possible
20 bio-hazard; right?

21 A. Yes.

22 Q. Okay. So it was quite likely that whomever wound
23 up in control and possession of this property was going to
24 tear this carpet out and have this room cleaned up; right?

25 A. Possibly.

1 Q. Because the police didn't do it; right?

2 A. Correct.

3 Q. The police didn't clean up the scene after you
4 were done; right? Didn't clean up this blood on the desk
5 that we see here in this exhibit; right?

6 A. Correct.

7 Q. Okay. So somebody was going to have to do that?

8 A. Yes.

9 Q. Okay. So going back to balancing the possible
10 damage to this blood-soaked carpet by cutting out a piece of
11 it, you would agree with me that if someone had thought of
12 it, it could have been done and it would have been
13 appropriate to do so?

14 A. I guess if you cut it out for that, there's no
15 reason why you wouldn't cut out hundreds of other pieces of
16 the carpet.

17 Q. Okay. And there was nothing to prevent you from
18 doing that; right?

19 A. Other than a number of evidence items.

20 Q. Because -- I mean, is there a limit? Can you have
21 too much evidence?

22 A. Well, it depends on how you look at it, I guess.
23 I mean, there's blood evidence and then there's, you know,
24 the entire room was covered in blood. So where do you stop
25 taking pieces of blood?

1 Q. What if this was somebody else's blood other than
2 Carol Kennedy, how important would that have been?

3 A. I can't answer that.

4 Q. But now we'll never know because it wasn't taken;
5 right?

6 A. I can't -- I don't -- there was blood everywhere,
7 so like I said, you just have to pick and choose what you
8 think is most important.

9 Q. That blood evidence that I'm circling here,
10 whatever it may have been, was not collected; correct?

11 A. I don't know. I didn't collect it.

12 Q. Okay. Did anybody else continue to collect
13 evidence in this room after you left that day, July 3, 2008?

14 A. I don't believe so, but I don't know what was
15 swabbed, what DPS collected.

16 Q. Let's look at 2325. This is another photo that
17 you and I were looking at earlier. I'm not sure if this
18 could be any worse, but you can see in this picture, and
19 again, if you need to step down. This is the edge of the
20 desk. That is Carol Kennedy's head, a portion of her head
21 there at the bottom of this exhibit; correct?

22 A. Yes.

23 Q. Okay. Here's the white plastic bottle with blood
24 on it; right?

25 A. Yes.

1 Q. Now looking at that picture, you said that you
2 couldn't remember without seeing a picture how the blood was
3 on that bottle. Is that what you were saying today?

4 A. Correct.

5 Q. Now you can; right?

6 A. For the most part, yes.

7 Q. You can see that the blood -- on the entire
8 surface that you can see in this photograph, there is blood
9 from the bottom to the top of this white plastic bottle;
10 isn't there?

11 A. Yes.

12 Q. Okay. And this red ball that we were talking
13 about here, it is almost invisible in this photograph, but
14 this was the ball that you also didn't collect, and you
15 couldn't tell us whether that had any blood on it just by
16 looking at this photograph; right?

17 A. Yes. Correct.

18 Q. Okay. And here is the corner of that molding
19 under or near Carol's head; right?

20 A. Correct.

21 Q. So the rest of that molding, this is one end of it
22 here; right?

23 A. Yes.

24 Q. The end of that molding and it's at -- you're off
25 the picture frame; correct?

1 A. Yes.

2 Q. So it was in this angle here; right?

3 A. Approximately.

4 Q. Okay. Well, you didn't move it; did you?

5 A. Not until we collect it.

6 Q. Until you collected it.

7 Now, tell me looking at that picture,
8 whether looking back on it, you said now, I think, that Carol
9 Kennedy's body had been removed before you took it; right?

10 A. Yes.

11 Q. It's pretty clear from this photograph you could
12 not have taken that piece of molding without moving or
13 disturbing her head somehow; correct?

14 A. Probably not.

15 Q. Okay. Was there another piece of molding on the
16 other corner of the desk? We can see the one corner here.
17 How about on the other side of the desk?

18 A. Yes.

19 Q. Was that collected?

20 A. No.

21 Q. Did it have any blood on it?

22 A. I couldn't tell you for sure.

23 Q. Was it on?

24 A. Yes.

25 Q. It was on? It wasn't lying on the floor like

1 this?

2 A. Correct.

3 Q. Okay. Now, this desk has considerable blood on
4 it. This is just the blood on the side and the front, and
5 we've all looked at pictures of the top. There was blood up
6 on the top, up in this corner here; right?

7 A. Yes.

8 Q. So this desk was not collected on July 3, 2008;
9 was it?

10 A. I did not collect it, no.

11 Q. Okay. Why?

12 A. I wasn't -- it wasn't my call whether to take
13 the -- I mean, actually taking items other than what I deemed
14 specifically looked suspicious to the crime and germane.
15 Larger items or cutting out carpet, that type of thing, would
16 have been more the call of the case agent or the supervisor
17 who was there on the scene.

18 Q. Were you present for any discussions with Doug
19 Brown or Luis Huante about taking this desk?

20 A. I don't recall any discussion.

21 Q. Well, if you're not going to take an item like
22 this desk that has blood evidence practically everywhere you
23 look, wouldn't it be critically important to photograph that
24 in a proper forensic manner?

25 A. I'm not sure -- I've never heard the term

1 "forensic photographing," so I'm not sure what that is.

2 Q. That's new to you?

3 A. I know what forensic interviewing is. I'm not
4 sure what forensic photographing is.

5 Q. Do you have any training or experience in crime
6 scene photography?

7 A. Not specifically, no.

8 Q. Okay. Wouldn't it make sense to you that if
9 there's a technique for forensic interviewing, which is
10 different than you and me talking here today; right? It's a
11 different technique; right?

12 A. Yes. Specifically with children, though.

13 Q. Yeah. Well, that's a good example. With children
14 there's special techniques and methods you use to interview
15 children who are possible victims in a sex case; right?

16 A. Yes.

17 Q. And I think we all, if we watch television, we
18 have some understanding of how difficult a job that can be.
19 It is challenging; isn't it?

20 A. Yes. It can be.

21 Q. And children of all ages can present all kinds of
22 different problems; right?

23 A. Yes.

24 Q. Now, if I told you that there was such a thing as
25 forensic photography, would that make sense in terms of

1 taking pictures of evidence, forensic evidence? You would
2 agree this blood is forensic evidence in this case; right?
3 "Forensic" meaning for use in court?

4 A. Yes.

5 Q. Okay. So if there are techniques for forensically
6 interviewing a child for a court case, wouldn't it make sense
7 that there are techniques for forensically photographing
8 evidence; right?

9 A. I don't know. It would make sense, but I don't
10 know.

11 Q. Okay. Well, a good example is: Let's compare the
12 desk molding, which we have, which we can all look at, which
13 we did yesterday. You can see the evidence on this; right?

14 A. Yes.

15 Q. And this can be sent to the lab and the lab can
16 work on it; right?

17 A. Yes.

18 Q. But if you had this blood evidence on this desk,
19 if you don't take the desk, all you have are the photographs;
20 right?

21 A. Correct.

22 Q. Okay. And you understand, generally, that there
23 are people who would try to interpret this blood evidence;
24 right?

25 A. I know there are experts, yes.

1 Q. Right. And so wouldn't you expect the experts to
2 want the best possible photographs available if they can't
3 examine the object itself? Do you see the difference?

4 A. Yes.

5 Q. Okay. Wouldn't it have been simpler, though, if
6 you were concerned about the photography to simply take this
7 desk?

8 A. I'm not -- I don't know how to answer that. I
9 wasn't in on the discussion about what large objects to take
10 and which not, and I'm not part of the evidence tech, you
11 know, I wasn't trained as an evidence technician. So I'm not
12 sure how to answer your questions.

13 Q. Not your call?

14 A. In this case, no.

15 Q. Okay. Have you ever taken large objects where it
16 was your call in other cases?

17 A. Semi, yes, I mean, like a crib. Different items
18 that are larger than a box.

19 Q. Right. And the sheriff's department doesn't have
20 any policy that discourages the seizure of large objects;
21 does it?

22 A. Not specifically, no.

23 Q. If they're important in the case, they're
24 important in the case, and you'll find room for them; right?

25 A. Yes.

1 Q. Okay. The same thing, we've seen pictures of
2 bookshelves in the room. Do you remember the bookshelves in
3 the room?

4 A. Yes.

5 Q. You didn't take them either; right?

6 A. I didn't.

7 Q. But the ladder was taken; right? The ladder over
8 the door?

9 A. I'm not aware. I don't know.

10 Q. Okay. Let's look at something you did take.
11 Let's look at 2291. Okay. Yesterday you were talking with
12 Mr. Butner about -- I forget what you all decided to call it.
13 It's a cordless phone and handset; right?

14 A. Yes.

15 Q. Okay. I got a little bit lost in your
16 description, but it's the silver object in the middle of this
17 photograph; right?

18 A. Correct.

19 Q. Okay. And that is a cordless phone as opposed to
20 a cell phone; right?

21 A. Correct.

22 Q. Which means it's a land line. If you call a
23 person's land line and they have a cordless phone, that's
24 going to ring; right?

25 A. Yes.

1 Q. Okay. And did you see in this room where this was
2 taken, which is the room where Carol Kennedy's body was
3 found, did you see a charger for this particular cordless
4 phone?

5 A. I can't specifically recall if there was a -- like
6 a charging base in that room or if it had a base. Some don't
7 have bases.

8 Q. Now, again, I understand not your call, other
9 people making these decisions, but just from your experience
10 being a detective for ten years, you knew or somebody knew by
11 the time you were searching mid-day July 3 that there was an
12 allegation that Carol Kennedy had been talking on the phone
13 to her mother at or about the time she was attacked. You all
14 knew that story; right?

15 A. Yes.

16 Q. Okay. That was told to you early on; right?

17 A. I believe so, yes.

18 Q. Okay. And this phone was found in the room not
19 that far from Carol Kennedy's body; right?

20 A. Yes.

21 Q. So I'm no detective, but I'm thinking you all may
22 have assumed that this phone was the phone she was talking
23 on; right?

24 A. Yes. I mean, we wanted the phone.

25 Q. And that's why you took it; right?

1 A. Yes.

2 Q. Okay. Now, knowing something about that phone and
3 its condition would have been very important; right?

4 A. Yes.

5 Q. Okay. So what's your training? When you seize a
6 telephone of any description, what are you trained to do with
7 it?

8 A. Well, any electronic equipment; phones, computers,
9 anything, we're trained not to turn them on or, you know,
10 disturb them in case there's some evidence there that might
11 be wiped away once it's powered up.

12 Q. Okay. So what you do is you take it and you bag
13 it; right?

14 A. Yes.

15 Q. And then somebody takes it back, sometimes you,
16 sometimes an evidence tech, sometimes another detective,
17 takes it back from the scene to the sheriff's office and it's
18 eventually put into evidence; right?

19 A. Yes.

20 Q. And there it sits until it is sent to the crime
21 lab for analysis, if that's what's going to happen; right?

22 A. Sometimes. Not that that procedure isn't
23 specifically -- I mean, depending on circumstances and, you
24 know, the -- I guess, depending on circumstances. It would
25 depend whether nothing whatsoever is done with the phone

1 until it goes to the lab or if there's a search or an
2 examination immediately before having to wait for, could be
3 months, for the crime lab to come back.

4 Q. Now, you know, don't you, either from your work as
5 a police officer, just living in 21st century America, that
6 cordless phones like this have a battery in them; correct?

7 A. Yes.

8 Q. And when you put the phone in a charger, the
9 charger charges the battery that's in this handset; right?

10 A. Yes, in most cases.

11 Q. So eventually at some point if this battery isn't
12 recharged, it may lose its charge; right?

13 A. Yes.

14 Q. Okay. Now, when you look at these phones, they
15 have -- we're looking at the back of the phone here; right?

16 A. Yes.

17 Q. Okay. On the other side are the numbers; right?

18 A. Yes.

19 Q. And other things. And sometimes a little screen;
20 right?

21 A. Yes.

22 Q. Okay. So when you pick this phone up -- can you
23 tell from the records what time this was actually picked up
24 off the ground by you?

25 A. Let me look.

1 (Whereupon, the witness reviews a document.)

2 Looks like 14:42 hours. 2:42 in the
3 afternoon.

4 Q. 2:42 in the afternoon.

5 Okay. Was it your understanding that the
6 telephone call between Carol Kennedy and her mother ended
7 abruptly sometime before 8:00 p.m. the night before?

8 A. I knew it was the night before. I couldn't say
9 exactly what time. It wasn't middle of the night. So --

10 Q. Let's think about this. At the time you're
11 investigating this case, you have this piece of information.
12 The piece of information being Carol Kennedy is on the phone
13 to her mom and the phone goes dead and the mom gets worried
14 and calls eventually the sheriff's office; right?

15 A. Yes.

16 Q. Leads to a welfare check. The first responder
17 finds the body; right?

18 A. Yes.

19 Q. And you get here the day after, more than 16, 17
20 hours later after that call you're looking at this phone;
21 right?

22 A. Let's see, I was there at 11:00. If it was ten
23 o'clock at night, I guess, it would have been 13 hours later.

24 Q. I am looking at a call at about nine o'clock and
25 you being here at about 2:42 in the afternoon.

1 A. Okay. So more like 15.

2 Q. Yeah. Okay. Quite some time; right?

3 A. Yes.

4 Q. And you had no idea whether the battery is
5 discharging in this phone from the time it hits the ground
6 until the time you pick it up; right?

7 A. Right.

8 Q. Now, wouldn't it be important and tremendously
9 useful for the police to know if there is something about the
10 condition of this phone when it's picked up that would
11 confirm or refute the idea that this was the phone she was
12 speaking on; right? That if there was something you could
13 see on that phone that would answer that question, that would
14 be very important; wouldn't it?

15 A. Yes.

16 Q. Okay. And what you might see is the fact that the
17 phone is on. That when you pick it up it appears to be on;
18 right?

19 A. If it were quickly, I suppose. I can't imagine
20 hours later that a phone would be on.

21 Q. Well, wouldn't it be important to do some
22 examination at some point of how this phone works? For
23 example, do you know -- I'm sure you do because I know you do
24 this all the time, an electronic device going to sleep;
25 right? What's that?

1 A. Kind of powering itself down most of the way to
2 preserve battery.

3 Q. Okay. Have you ever seen a cordless phone do
4 that?

5 A. I can't say specifically that I have. I'm not --
6 I have cordless phones in my house. I don't --

7 Q. I bet you're going to go home and see if they go
8 to sleep tonight; aren't you?

9 A. Yeah. I'm not sure how they work, actually.

10 Q. Okay. A computer laptop like Roxanne here has.
11 If that screen went to sleep, the simplest way to do that is
12 just touch any key and it should light back up; right?

13 A. Yes.

14 Q. Okay. So without turning that phone off and on,
15 would it be possible and within the protocols of the
16 sheriff's department to simply touch a key to see if the
17 screen lights up?

18 A. I don't know. I don't think I would have done
19 that only because it was -- it did appear to be a central
20 part, and I wouldn't want to mess up anything that might be
21 there, fingerprints or anything else on the keys.

22 Q. What if it takes days or weeks to work its way
23 into the crime lab to be analyzed? Isn't it quite likely
24 that whatever evidentiary value there might have been in that
25 phone at the time you collected it would be gone simply

1 because of battery life and battery issues?

2 A. My rudimentary knowledge of electronics would say
3 that once it was powered back up, whatever was stored in
4 memory would still be there.

5 Q. Possibly?

6 A. Possible.

7 Q. But you could answer some questions right away
8 about that phone if that -- and here would be a couple of
9 questions you could answer. If that phone were on -- think
10 about this. When you and I are talking on a land line, okay,
11 let's say we're just talking. You have your cordless phone
12 at home and I have a cordless phone here. There are a number
13 of ways that call can end; correct?

14 A. Yes.

15 Q. You can hang up your cordless phone; right?

16 A. Yes.

17 Q. And the way to do that typically is to just push a
18 button on the handset; right?

19 A. Yes.

20 Q. And that ends the call; right?

21 A. Yes.

22 Q. And I could still be on my phone saying,
23 "Detective, Detective, you there, you there," talking
24 endlessly into a phone; right?

25 A. Yes.

1 Q. Now, what happens in your experience? Will I get
2 a dial tone on this end?

3 A. Eventually.

4 Q. Yeah. Okay. Now, another way to hang up would be
5 we're having a conversation and I decide I've heard enough,
6 and I hit the button and that's just the reverse. You're
7 talking into the phone until you hear that dial tone; right?

8 A. Yes.

9 Q. We've all had that experience with cell phones and
10 cordless phones when you don't know the other side isn't
11 there; right?

12 A. Yes.

13 Q. Okay. Now, are there other ways the call could
14 end?

15 A. I believe that if the base were unplugged it would
16 interrupt the power to the phone, but I'm not sure.

17 Q. We will look at the base in a minute. What if you
18 just took your cordless phone and just set it down on the
19 carpet, okay, and didn't talk into it again. Would the
20 person on the other side hearing nothing perhaps eventually
21 hang up?

22 A. I would assume so.

23 Q. But that's an open line. If we're doing it this
24 way, whatever the range of that phone is, it's going to pick
25 up perhaps noise on the other end, people talking, something

1 happening; right?

2 A. Possibly.

3 Q. If it's near something that's making noise; right?

4 A. If it's not turned off, yes.

5 Q. Okay. Do you know -- did you know on July 3,
6 2008, whether that phone came to rest in that location we see
7 in this photograph because that's where it was dropped, or
8 did somebody place it there?

9 A. I don't know.

10 Q. Okay. It could have had important fingerprint
11 evidence on it, too; right?

12 A. Possibly.

13 Q. It could have had blood evidence on it. Did you
14 see any blood on it?

15 A. I don't believe I saw any on there.

16 Q. How about DNA evidence on it?

17 A. Possibly.

18 Q. Did it have DNA evidence on it, if somebody had
19 been handling it?

20 A. Possibly.

21 Q. Okay. Now going back to this phone and the
22 question, one of the questions that this phone might have
23 answered would be how the call ended; right? If you picked
24 up the phone and it was off; right, then, a person, a
25 detective could reasonably assume that the fact that it was

1 off is the reason the call between Carol and her mother
2 ended; right?

3 A. That would be one possibility.

4 Q. Okay. Let me show you -- and what would another
5 possibility be?

6 MR. BUTNER: Objection. Calls for
7 speculation.

8 THE COURT: Overruled.

9 MR. SEARS: Thank you.

10 THE WITNESS: I hate to guess, being a
11 detective.

12 BY MR. SEARS:

13 Q. I'm just asking you if you know other ways that --
14 other circumstances that would account for the phone being
15 off. What would that be?

16 A. Other than?

17 Q. The button being turned off.

18 A. Possibly that it was on and the other end had hung
19 up.

20 Q. Right.

21 A. And the phone just kind of --

22 Q. Carol's mother --

23 A. -- went off.

24 Q. Carol's mother could have terminated the call;
25 right?

1 A. Yes. If that's who she was talking to.

2 Q. And that could have happened because it's obvious
3 that eventually she hung up her phone; right? You can make
4 that assumption. She had to hang up the phone to call the
5 police; right?

6 A. Unless she used a different phone, yes.

7 Q. Right. Let's just assume that she had one phone
8 when she called the police. The records will show that the
9 call she made was from the line she was talking to her
10 daughter on.

11 A. Okay.

12 Q. But you're not comfortable with that because I'm
13 asking you to assume something you don't know.

14 A. Correct.

15 Q. Okay. We don't want to go there.

16 If this phone -- and you said one of the
17 possible ways that this phone call could have terminated
18 would have been if the base unit was unplugged; right?
19 Right? Is that what you understand?

20 A. I think. I don't know that for sure.

21 Q. Let me show you 3158 in evidence. Okay. Now, I
22 will tell you that other witnesses have identified this as
23 Kortney Snider here. I know you can't see enough of her to
24 make a positive identification; right?

25 A. Okay.

1 Q. There's somebody with gloves, crouching down,
2 holding an L-shaped scale on the wall; right?

3 A. Yes.

4 Q. And you see this plug and cord. Do you see this
5 object here?

6 A. Yes.

7 Q. What do you think that is?

8 A. It appears to be a charging station for a phone.

9 Q. Let me zoom in a little bit more until we lose all
10 resolution. Okay. Is it clear now what that is?

11 A. The same as before, it looks to be the charging
12 station for something.

13 Q. Okay. Now, there's no phone in this picture;
14 right?

15 A. Not that I can see.

16 Q. Did you find another cordless phone? And I will
17 tell you that this window is the window on the wall across
18 the room from where Carol Kennedy's body was found. Do you
19 remember that window?

20 A. When you say across the room, where the outside
21 door is?

22 Q. No. If you came in -- this is the window on the
23 wall. Would you feel more comfortable if we looked at?

24 A. Out to the back porch?

25 Q. Yes.

1 A. Okay.

2 Q. Okay. Do you see the bookshelf down here?

3 A. Yes.

4 Q. Okay. Does that help orient you? There's another
5 piece of the bookshelf here.

6 A. Yes. I think I know where that is.

7 Q. Okay. Do you remember seeing the charger in here?

8 A. Not that I remember, no.

9 Q. Well, you had a cordless phone, and you knew it
10 was a cordless phone. There was no mistaking. It wasn't a
11 cell phone; right?

12 A. Correct.

13 Q. It was a cordless phone.

14 Okay. And doesn't -- wouldn't it make
15 sense to look for an empty charger someplace in the house?

16 A. Yes. And I believe I did. It seems to me that I
17 might have seen one in the kitchen.

18 Q. Okay. We'll look at that picture next. How did
19 you miss this one?

20 A. I probably did see it. I just can't recall now
21 whether I saw it back then. I mean, I saw the entire room,
22 so --

23 Q. Yeah. You said you spent time familiarizing
24 yourself with the room and the circumstances before you
25 started; right?

1 A. Right.

2 Q. Okay. Is there any reason you can think of today,
3 September 9, 2010, why you didn't take this charger on
4 July 3, 2008?

5 A. I just didn't think about taking it.

6 Q. It would have connected the phone to a charger;
7 right?

8 A. Yes.

9 Q. Okay. And you could have looked to see if it was
10 the charger that was meant for that phone; right?

11 A. Yes.

12 Q. And if you had never found -- let's assume -- I
13 won't make you do that.

14 Not all chargers fit all phones. That's
15 your experience; right?

16 A. Yes.

17 Q. They are sometimes specific to the make; right?

18 A. Yes.

19 Q. A VTech phone, which is what this was, would
20 perhaps only work with a VTech charger; right?

21 A. Yes. ETech I think it is.

22 Q. Yeah.

23 Now, you see that it's plugged in; right?

24 A. Yes.

25 Q. Okay. Is that the condition it was in when you

1 saw it? Was it plugged in?

2 A. I don't -- like I said, I don't recall from two
3 years ago what I remember. If it's plugged in there, I can't
4 imagine anybody from our team would have taken it from an
5 unplugged position and plugged it in.

6 Q. For the very reason you just told us, which is
7 that it's possible that unplugging that base unit would kill
8 any phone calls that were in progress on the phone associated
9 with the charger; right?

10 A. Not so much that, just -- we, you know, nothing
11 was disturbed other than what we collected in evidence so --

12 Q. Bookshelves were set back up. Were you there when
13 that was done?

14 A. No. I don't believe so.

15 Q. Were they knocked over when you were there?

16 A. Yes.

17 Q. Both of them?

18 A. Two or three of them.

19 Q. Okay. You didn't see --

20 A. Now, I take that back. It seems like one or more
21 of them may have been moved in order to get around the room
22 because it was, you know, covering the room the way they
23 were.

24 Q. Okay. Tell me, if you could, who you thought was
25 making -- or if it was more than one person, were making the

1 decisions about what was to be taken and what was to be left
2 in the search warrant on July 3, 2008?

3 A. If there was a question -- I mean, there were some
4 items that I determined. Okay, we want this, we want this.
5 If there was a question as to whether or not we needed to
6 take something and I couldn't make that decision, I would say
7 at the time Doug Brown was the case agent, but there were one
8 or two sergeants as well as a lieutenant was there part of
9 the time, or most of the time, possibly even a captain was
10 there. So I probably, if I had a question, I probably would
11 have gone to Doug Brown as the case agent, or if he wasn't
12 there or if he didn't know, because he was a very brand
13 new -- not brand new, he was a new detective. This was his
14 first homicide scene -- excuse me, first case agent as a
15 homicide detective. That he -- or I probably would have gone
16 a little higher up to either a sergeant or a lieutenant to
17 ask whether this needed to be taken.

18 Q. So one way to describe it would be, with respect
19 to deciding what to take, you were on your own except when
20 you weren't?

21 A. On my own unless I wasn't certain that this was
22 something that we absolutely needed.

23 MR. SEARS: Thank you. No further questions,
24 Your Honor.

25 THE COURT: Thank you, Mr. Sears.

1 Mr. Butner, redirect?

2 MR. BUTNER: Yes.

3 REDIRECT EXAMINATION

4 BY MR. BUTNER:

5 Q. Referring to that phone charger, did you note that
6 charger to be of any evidentiary value, Detective Edgerton?

7 A. Not anything specific, other than it went to the
8 phone. Nothing that specifically needed to be collected.

9 Q. You didn't think it had any blood on it or
10 anything like that?

11 A. I don't know whether it had blood on it, but if it
12 had blood on it, that wouldn't have necessarily meant that I
13 needed to collect it.

14 Q. And it was on the opposite side of the room from
15 the body. Do you now realize that?

16 A. Yes.

17 Q. When you were searching in that room, did you make
18 it a point to seize items that you believed to be of
19 evidentiary value?

20 A. Yes.

21 Q. In regard to the bottle that was by Carol
22 Kennedy's head, did you make a decision about that particular
23 bottle that was by her head?

24 A. I may have consulted on that. I think my decision
25 was that it didn't need to be collected, but I might have

1 consulted somebody to make sure.

2 Q. And what was the reason that you thought it didn't
3 need to be collected?

4 A. It just didn't appear to have any kind of pattern.
5 I mean, there was blood all over it, but there was
6 blood -- you know, we couldn't take the entire room. There
7 was no discernible pattern such as what looked like hand or
8 finger smudges in the blood. It just appeared to be an item
9 that was there that had blood spattered and/or dripped on it,
10 a lot of dripping.

11 Q. And was that the same thing with the desk, there
12 was blood splashed on the side of it?

13 A. Yes. There was blood all over the side of the
14 desk.

15 MR. BUTNER: No further questions, Judge.

16 THE COURT: Thank you, Mr. Butner.

17 There are some jury questions I can see,
18 so if I could have those at this time.

19 (Whereupon, a discussion was held at side bar.)

20 THE COURT: Any other questions? I want to
21 make sure I have all the questions. There are quite a few,
22 so I am going to take a recess rather than trying to do this
23 at side bar. I would like to get to the questions before the
24 noon break, if possible.

25 Detective, I will ask that you excuse

1 yourself from the courtroom, and the jury will be in recess.
2 Remember the admonition. Please be ready to come back in at
3 a quarter till, 15 till.

4 I will ask the parties to remain. And
5 Phil if you could come right back and make copies, please.
6 Thank you.

7 (Whereupon, the jury exits the courtroom.)

8 (Whereupon, a discussion was held in
9 open court out of the presence of the jury,
10 but is not contained herein.)

11 (Whereupon, the jury enters the courtroom.)

12 THE COURT: The record will show the presence
13 of the defendant, the attorneys and the jury has returned as
14 well. Detective Edgerton is back on the stand and, of
15 course, the jury was not present when the questions were
16 discussed with counsel.

17 But, Detective Edgerton, I am going to
18 read the questions and the lawyers may choose to follow-up.

19 QUESTIONS BY THE JURY

20 THE COURT: The first one has to do with item
21 numbers that go with certain items. Item numbers for four
22 gigabyte flash drive found on desk next to printer and for
23 the documents that were taken.

24 Can you provide those item numbers?

25 THE WITNESS: Yes.

1 THE COURT: First for the four gigabyte flash
2 drive.

3 THE WITNESS: Okay. Four gig jump drive, on
4 desk, in office, next to printer is No. 502.

5 And the paper documents, was that the
6 other?

7 THE COURT: And the documents that were taken.

8 THE WITNESS: Okay. All right. Okay. At the
9 Bridle Path residence, which is where the body was, the paper
10 documents, which included -- am I allowed to say that?

11 THE COURT: Just the items numbers for the
12 documents.

13 THE WITNESS: 524 were the documents that were
14 taken from the Bridle Path residence. The documents from the
15 Alpine Meadows, I've got those somewhere. Sorry. The
16 documents from Alpine Meadows that were seized, number was
17 3106.

18 THE COURT: The next is just a general
19 question. Well, let me ask if there is any follow-up on
20 those first two questions with regard to item numbers,
21 Mr. Butner?

22 MR. BUTNER: No follow-up, Judge. Thank you.

23 THE COURT: Mr. Sears?

24 MR. SEARS: No, Your Honor.

25 THE COURT: Okay. And the next one is: Can

1 we hold the desk molding while it is in this tube just to
2 feel the weight of it?

3 And you may if someone --

4 MR. BUTNER: Judge, you missed the second
5 question.

6 THE COURT: Oh, I'm sorry.

7 Item number for Exhibit 3255, I believe
8 that is the envelope. Is that right? Do you have that?
9 Exhibit 3255, which I have in my notes is the envelope that
10 was admitted into evidence.

11 Do you have that item number, Detective?

12 THE WITNESS: Yes, the item that was seized
13 that was part of the Alpine Meadows, which would have been
14 within No. 3106. No, no, no, no, I'm sorry, if I said 3106
15 before I was mistaken. So I'm going to back up. That was
16 not mine, I'm sorry.

17 Okay. 3109 were the documents taken from
18 the Alpine Meadows residence and this envelope, if that's the
19 one that they're requesting, that came -- that was within
20 3109.

21 THE COURT: Okay. Before I move on, follow-up
22 on either of those, Mr. Butner?

23 FOLLOW-UP QUESTIONS

24 BY MR. BUTNER:

25 Q. Exhibit No. 3255, the envelope there, just to

1 clarify, that came out of documents that you seized at Alpine
2 Meadows as indicia of residency by Mr. DeMocker; is that
3 correct?

4 A. Yes. Correct.

5 Q. Okay. That's an envelope bearing Mr. DeMocker's
6 name and address?

7 A. Yes.

8 Q. And it came out of -- it was identified on the
9 search warrant supplement by you as Evidence No. 3109; right?

10 A. Yes.

11 MR. BUTNER: Okay. Thank you. No further
12 follow-up.

13 THE COURT: Mr. Sears?

14 MR. SEARS: Nothing.

15 QUESTIONS BY THE JURY

16 THE COURT: Then the last part on Page 1, can
17 we hold the desk molding while it is in the tube just to feel
18 the weight of it?

19 And we are having assistance with that.

20 Ladies and gentlemen, as I have told you,
21 if anybody wants to have gloves even to handle the tube, you
22 may, but anybody who wishes to handle it -- does anybody --
23 okay.

24 Well, Phil, you might want to have some
25 gloves on now.

1 Then Page 2 -- I guess I should ask, did
2 either of the attorneys want to follow-up with that request,
3 Mr. Butner?

4 MR. BUTNER: No questions, Judge. Thank you.

5 THE COURT: Mr. Sears?

6 MR. SEARS: No.

7 THE COURT: Okay. Then on Page 2, could the
8 cordless VTech phone disconnect the call with Carol's mother
9 if the hand-held phone's battery went dead during their
10 conversation?

11 If you can answer that.

12 THE WITNESS: Well, first of all, it's a --
13 the phone is called an ETech, not a VTech, not that it makes
14 a lot of difference but the brand name is ETech.

15 If -- I don't want to assume or guess at
16 something. In my experience, I have lost a call when a
17 battery died while on the phone. I don't know about this
18 specific phone.

19 THE COURT: Mr. Butner?

20 MR. BUTNER: No follow-up, Judge. Thank you.

21 THE COURT: Mr. Sears?

22 MR. SEARS: Just a moment, Your Honor. I am
23 trying to find an exhibit.

24 May I approach the witness, Your Honor?

25 THE COURT: Yes.

1 FOLLOW-UP QUESTIONS

2 BY MR. SEARS:

3 Q. Let me show you 2291 in evidence here. And I'll
4 be happy to put it in the ELMO and blow it up if you can't
5 read what's stamped on the front.

6 What does that say?

7 A. It looks to me like VTech.

8 Q. "V" as in Victor?

9 A. Yes, sir.

10 Q. Not "E" as in Edgar?

11 A. Correct.

12 Q. Okay. And that's a picture of the phone you took;
13 right?

14 A. Yes.

15 Q. That says VTech on it?

16 A. Yes, sir.

17 Q. Okay. Thank you.

18 A. My apologies. It's written on our supplement as
19 ETech.

20 MR. SEARS: No other questions.

21 QUESTIONS BY THE JURY

22 THE COURT: On Page 3, there is a series of
23 questions here, Detective, concerning Exhibit No. 3040, and
24 that is a view of handset for cordless phone, on floor, in
25 office, and there is a premise that says phone appears to

1 have dents.

2 Is the exhibit handy, 3040, photo of
3 handset of cordless phone, on floor, in office?

4 MR. BUTNER: Let me see if I can find it very
5 quickly. 3040, here it is.

6 THE COURT: I see that the detective has that
7 exhibit. Thank you, Mr. Butner.

8 So the first question is: Are they
9 dents?

10 THE WITNESS: No. I don't see any dents in
11 the phone. There are some patterns, but no dents.

12 THE COURT: I will ask this whole series
13 before I ask if there is any follow-up.

14 How much blood was on the phone?

15 THE WITNESS: From the picture, it appears
16 like there's no blood on the phone. I don't independently
17 recall when I was there and when I picked it up if there was
18 any blood on the phone, but on the back of the phone, the
19 picture, there doesn't appear to be any.

20 THE COURT: And the next question, I will just
21 read it as it stands.

22 Were there fingerprints on phone, the
23 handset?

24 THE WITNESS: I did not -- I was not -- I
25 collected the evidence, the phone. I did not request that it

1 be sent for fingerprints. I do not know if the case agent or
2 anybody else in the case sent in this phone for fingerprints.

3 THE COURT: How many different prints were
4 found on the handset?

5 THE WITNESS: Again, I don't even know if it
6 was submitted for fingerprint evidence, so I couldn't answer
7 that question.

8 THE COURT: Was there a caller ID button on
9 the phone?

10 THE WITNESS: I don't recall.

11 THE COURT: Okay. So the next question, I
12 think, you have answered it.

13 If so, was the phone checked to see who
14 called last and from what number you indicated?

15 THE WITNESS: The phone was not -- well, I'm
16 not aware that the phone was checked last number using the
17 caller ID button, however, I am aware that phone records for
18 the phone have been subpoenaed and have been checked for
19 calls going in and out.

20 THE COURT: Mr. Butner, any follow-up on any
21 of those questions.

22 MR. BUTNER: No questions, Judge.

23 FOLLOW-UP QUESTIONS

24 BY MR. SEARS:

25 Q. So you didn't see the lab report indicating the

1 presence of unidentified male DNA on this phone?

2 A. No, I haven't.

3 MR. SEARS: No other questions.

4 QUESTIONS BY THE JURY

5 THE COURT: Do you know the reasoning why a
6 search warrant was issued for the Alpine residence in
7 October?

8 THE WITNESS: Other than the requested items
9 to be seized at the search warrant, I'm not specifically
10 aware of why at that time the search warrant was done on that
11 house or if there had been one before or after that
12 particular search warrant. Actually, I'm sorry, let me
13 correct that. I believe there had been a search warrant done
14 on that residence prior to. I believe there was.

15 THE COURT: Follow-up, Mr. Butner?

16 MR. BUTNER: No questions concerning that,
17 Judge.

18 THE COURT: Mr. Sears?

19 MR. SEARS: No questions.

20 THE COURT: Is it common for a warrant to be
21 issued three-and-a-half months after the first search?

22 THE WITNESS: Yes. Well, I'm not sure if
23 "common" is the right word, but depending on the size of the
24 case and how long it lasts, several warrants over months, and
25 I guess, possibly even years could be issued depending on new

1 evidence and that type of thing. New evidence of possible --
2 something that might be there that we weren't aware was
3 evidence at the time. There could be -- excuse me, there
4 could be warrants issued in a very lengthy manner after an
5 actual crime has been committed.

6 THE COURT: Follow-up, Mr. Butner?

7 MR. BUTNER: No additional questions, Judge.
8 Thank you.

9 THE COURT: Mr. Sears?

10 FOLLOW-UP QUESTIONS

11 BY MR. SEARS:

12 Q. Detective, in this particular case, did you ever
13 stop to compare the description of the items sought in the
14 July 3 search warrant against the items sought in the
15 October 23 search warrant at a different location?

16 A. Did I compare the items sought at two different
17 locations?

18 Q. Yes.

19 A. For the -- okay.

20 Q. You didn't search Alpine Meadows on July 3, we
21 know that; right?

22 A. No. I did not.

23 Q. You searched Bridle Path; right?

24 A. Correct.

25 Q. And on October 23, you didn't search Bridle Path,

1 you searched Alpine Meadows; right?

2 A. Yes, that's correct.

3 Q. Did you ever look at the first Alpine Meadows
4 search warrant from early July against the one that you were
5 executing in October?

6 A. At Alpine Meadows?

7 Q. Yes.

8 A. No, I did not.

9 MR. SEARS: No other questions.

10 THE COURT: Mr. Butner, anything on that?

11 MR. BUTNER: If I might, Judge.

12 FOLLOW-UP QUESTIONS

13 BY MR. BUTNER:

14 Q. The sheriff's office doesn't issue search
15 warrants; do they?

16 A. No. We request them.

17 Q. And who do you request them from?

18 A. A judge.

19 Q. And do you have to provide the judge with an
20 affidavit of some sort setting forth the facts that would
21 justify the issuance of the search warrant?

22 A. Yes, we do.

23 Q. And does the judge review that affidavit before
24 issuing the warrant?

25 A. Yes.

1 Q. So it's a decision that's made by a judge not the
2 sheriff's office as to whether the warrant gets issued?

3 A. That's correct.

4 MR. BUTNER: Thank you.

5 QUESTIONS BY THE JURY

6 THE COURT: If you can answer this, was the
7 note found in the trash crumpled up or was it just tossed
8 into the can?

9 THE WITNESS: It was -- it didn't appear to
10 have crumpled marks or bends in it, so it was, if anything
11 might have been folded in half, but I believe it was just a
12 small -- not like an 8-by-11 paper. I think it was just more
13 of a kind of steno pad paper that was just put in the trash
14 can.

15 THE COURT: Follow-up, Mr. Butner?

16 MR. BUTNER: None. Thank you, Judge.

17 THE COURT: Mr. Sears?

18 MR. SEARS: None.

19 THE COURT: Okay. Then may Detective Edgerton
20 be excused as a witness and subject to recall, Mr. Butner?

21 MR. BUTNER: She may be excused, Your Honor.

22 MR. SEARS: She may be excused, Your Honor.

23 THE COURT: Okay. Thank you.

24 Detective Edgerton, you will be excused
25 as a witness at this time. You do know what the Rule of

1 Exclusion of witnesses means; correct?

2 THE WITNESS: Yes, sir.

3 THE COURT: And it is invoked in this case.

4 And as I've mentioned before, please
5 watch your step as you step down.

6 Ladies and gentlemen, we will go ahead
7 and take the noon recess at this time. There are some legal
8 matters to discuss, so I am going to ask you to please be
9 back in the jury room by 1:35. So be back at 1:35. And
10 remember the admonition, of course.

11 And I am going to ask the parties to
12 remain. Thank you.

13 (Whereupon, the jury exits the courtroom.)

14 (Whereupon, a discussion was held in
15 open court out of the presence of the jury
16 but is not contained herein.)

17 (Whereupon, a recess was taken at 12:13 p.m.
18 to resume at 1:35 p.m. of the same day.)

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SEPTEMBER 9, 2010
1:41 P.M.

JURY TRIAL

(Whereupon, the jury enters the courtroom.)

THE COURT: The record will show the presence of the defendant, all of the defense attorneys. Mr. Butner is here for the State. The jury is present.

Just want to announce that we will be recessing by 4:00 p.m., taking the evening recess by that time today, ladies and gentlemen.

And, Mr. Butner, you may proceed.

MR. BUTNER: Thank you, Judge. I would like to call Deputy Sims to the stand, please.

THE COURT: Okay.

Ma'am, if you would please stand where the bailiff directs you and then raise your right hand to be sworn by the clerk.

THE CLERK: You do solemnly swear or affirm under the penalty of perjury that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE COURT: Please be seated here at the witness stand. Would you please begin by stating and spelling your full name.

1 THE WITNESS: Debra M. Sims; D-E-B-R-A, M.,
2 S-I-M-S.

3 THE COURT: Thank you.

4 Mr. Butner.

5 DEBRA M. SIMS,
6 called as a witness, having been duly sworn, testified as
7 follows:

8 DIRECT EXAMINATION

9 BY MR. BUTNER:

10 Q. You go by Debbie; is that correct?

11 A. Uh-huh.

12 Q. Okay. Miss Sims, what is your present occupation?

13 A. I work at a dermatologist office.

14 Q. At a dermatologist office?

15 A. Uh-huh.

16 Q. Okay. Please, if you would move that microphone
17 close to your mouth, relatively, so that everybody can hear
18 you.

19 And before working at the dermatologist
20 office, did at some point in time you used to be employed at
21 the Hassayampa Country Club?

22 A. No.

23 Q. Were you employed someplace around the Hassayampa
24 Country Club?

25 A. No.

1 Q. Did you ever work at the fitness center?

2 A. I worked out at the fitness center.

3 Q. So you worked out at the fitness center at the
4 Hassayampa?

5 A. Uh-huh.

6 Q. Is that "yes"?

7 A. Yes.

8 Q. And were you working out at the fitness center on
9 July the 2nd of the year 2008?

10 A. Yes.

11 Q. How is it you're able to remember that particular
12 day?

13 A. Because I was questioned shortly after that by a
14 detective.

15 Q. Okay. And on July the 2nd of the year 2008, were
16 you accompanied by anybody there at the fitness center?

17 A. No.

18 Q. You were by yourself?

19 A. Yes.

20 Q. Did you have a regular workout time, so to speak?

21 A. Typically, yes.

22 Q. And what was that workout time?

23 A. Depended on the day of the week.

24 Q. Okay. This would have been, I believe, a
25 Wednesday. Did you have a regular workout time for

1 Wednesdays?

2 A. Probably 4:30.

3 Q. And how long did you workout at the fitness
4 center?

5 A. An hour.

6 Q. So you were there from 4:30 to 5:30 on July the
7 2nd of the year 2008?

8 A. Yes.

9 Q. Is that your -- basically, your recollection?

10 A. Yes.

11 Q. What did you do when you worked out at the fitness
12 center? What kinds of activities?

13 A. What equipment did I use?

14 Q. Right.

15 A. I usually did the elliptical and the weights.

16 Q. And I've have been to the fitness center on a
17 couple of occasions, there's an indoor and an outdoor area;
18 is that correct?

19 A. Where the weights are at are indoor.

20 Q. Right. And what's outdoors?

21 A. A pool.

22 Q. Okay. And you stayed indoors on that particular
23 day to your recollection?

24 A. Yes.

25 Q. Did you ever see while you were working out there

1 anybody from the DeMocker family?

2 A. That day or --

3 Q. That particular day when you were working out
4 there?

5 A. Not that I recall.

6 Q. Did you know people from the DeMocker family?

7 A. As an acquaintance.

8 Q. And who did you know from that family?

9 A. Carol Kennedy.

10 Q. Did you know anybody besides Carol Kennedy, like
11 Steve DeMocker?

12 A. I have never been introduced to him. I recognize
13 him.

14 Q. And you would have recognized him by sight on that
15 day?

16 A. Yes.

17 Q. And how about the daughter of Carol Kennedy and
18 Steve DeMocker, that would be Charlotte DeMocker? Did you
19 know her?

20 A. No. I don't.

21 Q. So you didn't see Steve DeMocker on that
22 particular day?

23 A. Not that I recall.

24 Q. Not working out there?

25 A. Not that I recall.

1 Q. And did you -- and you don't recall seeing
2 Charlotte DeMocker working out there, but you don't know her?

3 A. I don't know her, so I wouldn't know.

4 MR. BUTNER: No further questions. Thank you
5 very much.

6 THE COURT: Thank you.

7 Mr. Sears.

8 CROSS-EXAMINATION

9 BY MR. SEARS:

10 Q. Miss Sims, my name is John Sears. I represent
11 Steve sitting here with me.

12 Do you recognize Steve?

13 A. I do.

14 Q. Okay. So let me get this straight. The police
15 came and talked to you after this happened, and they wanted
16 to know if you had seen Steve DeMocker at the fitness center
17 on July 2nd?

18 A. I just got a phone call. They didn't come to my
19 house. I just got a phone call and they asked if I was at
20 the fitness center and who was there.

21 Q. Did they bother to ask you what time you were
22 there?

23 A. I don't remember that.

24 Q. If I told you that Steve DeMocker arrived at the
25 fitness center parking lot a little after 10:00 p.m., would

1 you have been there at 10:00 p.m. that night?

2 A. No.

3 Q. You would have been gone for four-and-a-half
4 hours, roughly?

5 A. Sure. Yeah.

6 MR. SEARS: No further questions.

7 THE COURT: Any redirect, Mr. Butner?

8 MR. BUTNER: No redirect, Judge. Thank you.

9 THE COURT: Any questions by the jury?

10 Seeing no questions, may Miss Sims be
11 excused as a witness, counsel?

12 MR. BUTNER: She may, Your Honor.

13 THE COURT: Mr. Sears?

14 MR. SEARS: Yes. With our apologies.

15 THE COURT: You are excused as a witness,
16 Miss Sims. The Rule of Exclusion of witnesses applies in
17 this case. This means that you cannot communicate in anyway
18 with other witness about your testimony or about any other
19 aspect of this case until all witnesses have testified. It
20 is best that you not discuss the case with anyone until the
21 trial is completed, however, you may talk to the attorneys
22 about the case as long as no other witnesses are present.

23 Do you understand?

24 THE WITNESS: Yes.

25 THE COURT: Thank you. You are excused.

1 Please watch your step.

2 Mr. Butner, you may call the next
3 witness.

4 MR. BUTNER: Jackie Wheeler, Judge.

5 THE COURT: Ma'am, if you would please stand
6 where the bailiff directs you and then raise your right hand
7 and be sworn by the clerk.

8 THE CLERK: You do solemnly swear or affirm
9 under the penalty of perjury that the testimony you are about
10 to give will be the truth, the whole truth, and nothing but
11 the truth, so help you God?

12 THE WITNESS: I do.

13 THE COURT: Please be seated here at the
14 witness stand.

15 Ma'am, would you please begin by stating
16 and spelling your full name.

17 THE WITNESS: It's Jacqueline Kay Wheeler.
18 J-A-C-Q-U-E-L-I-N-E K-A-Y W-H-E-E-L-E-R.

19 THE COURT: Thank you.

20 JACQUELINE KAY WHEELER,
21 called as a witness, having been duly sworn, testified as
22 follows:

23 DIRECT EXAMINATION

24 BY MR. BUTNER:

25 Q. Miss Wheeler, thank you for coming.

1 What is your present occupation?

2 A. I'm a regional administrative officer for a
3 financial services firm.

4 Q. What financial services firm are you a regional
5 administrative officer for?

6 A. UBS.

7 Q. And what does UBS stand for by the way?

8 A. United Bank of Switzerland.

9 Q. And how long have you been employed by United Bank
10 of Switzerland, or UBS?

11 A. Since April of 2007.

12 Q. And what are your duties as a regional
13 administrative officer?

14 A. I manage the administrative managers of all the
15 branches in five states.

16 Q. You manage the what?

17 A. I manage the administrative managers of all the
18 branches in five states.

19 Q. And were you performing those same duties in April
20 of 2007?

21 A. No. I was hired to be a branch manager.

22 Q. Would you move up close to that microphone.

23 So you were hired to be a branch manager?

24 A. Yes.

25 Q. And what branch were you hired to manage?

1 A. Sun City.

2 Q. And how long did you manage the Sun City branch?

3 A. You know, I'm sorry, I can't remember. We closed
4 it. Probably until, probably early 2009.

5 Q. As a branch manager, did you also go to other
6 locations or other UBS offices from time to time?

7 A. Yes.

8 Q. And what did you do when you went to those
9 offices?

10 A. I had another job, as well, that was a market area
11 administrative officer, so I was doing some of what I do now
12 managing admin managers, and I also would go make branch
13 visits to small offices, supervisory visits.

14 Q. Are you familiar with the defendant in this case,
15 Steven DeMocker?

16 A. Yes.

17 Q. And did you perform market area administrative
18 officer duties at any of the branches or a branch that
19 Mr. DeMocker worked at?

20 A. No. That's a different part of my job. I did go
21 and supervise a branch that he was at.

22 Q. Tell me about that. How is it that you happen to
23 be supervising a branch that he was at?

24 A. It's a regulatory thing in our industry that
25 satellite branches have to be supervised periodically if they

1 are too small to have an on-site manager.

2 Q. Okay. And --

3 A. And so I would make visits once in awhile.

4 Q. Okay. And were you making a visit to a satellite
5 branch that Mr. DeMocker was working at in, I believe, August
6 of 2008?

7 A. Yes.

8 Q. And on that particular -- well, let me back up for
9 just a sec.

10 When you supervise these branches or you
11 made these visits, are there special duties that you have as
12 part of that job of supervising a branch?

13 A. Yes, loosely. It's just to -- sometimes you would
14 look at the files or just a lot of times just to sit in the
15 branch. Just to be there and observe the activities and
16 things like that.

17 Q. And what about the duties in regard to mail that
18 comes into the branches? Are there any kinds of special
19 policies or protocols in place in terms of how mail is
20 handled?

21 A. Mail is handled the same every day, regardless of
22 whether a manager is on site or not. And it has to be opened
23 by someone that is not a financial advisor. Someone on the
24 support staff.

25 And how much detail do you want?

1 Q. Well, I'm kind of just learning about your policy.
2 So that's basically the policy, somebody else has to open the
3 mail other than a financial advisor?

4 A. Yes.

5 Q. Now what was Mr. DeMocker's job with UBS?

6 A. He was a financial advisor.

7 Q. So he wasn't supposed to open mail?

8 A. Correct.

9 Q. Who was supposed to open the mail, then?

10 A. Whoever the assistant was.

11 Q. On occasion would you actually open the mail?

12 A. I would open the mail when I was there.

13 Q. And you were visiting Mr. DeMocker's satellite
14 branch on occasion when you opened some mail directed to him?

15 A. Yes.

16 Q. When was that?

17 A. Everytime I was up there, I would open mail.

18 Q. Okay. And back in August of 2008, do you recall
19 the date that you were visiting that satellite branch?

20 A. I was up there every Friday. So whatever dates
21 Fridays fell on in 2008.

22 Q. Do you recall being at -- this was the Prescott
23 satellite branch; is that correct?

24 A. Yes.

25 Q. And that was on Plaza Drive in Prescott, Arizona?

1 A. Yes.

2 Q. Do you recall being at the Plaza Drive address on
3 or about August 22nd of the year 2008, opening some mail
4 directed to Mr. DeMocker?

5 A. If that was a Friday.

6 Q. Well, I don't have a specific recollection of
7 that. Do you recall receiving some mail from Mr. DeMocker
8 when you were at the Prescott branch that you felt was
9 unusual in some fashion?

10 A. Yes.

11 Q. Tell us about that, would you, please.

12 A. It was a box of books.

13 Q. And was this in August of 2008?

14 A. Yes.

15 Q. Was this on Friday in August of 2008?

16 A. It would have been on Friday, yes.

17 Q. On or about August 22nd of 2008?

18 A. Probably, I can't tell you for sure.

19 Q. Let me show you what's been marked as
20 Exhibit No. 229. And I'd ask if you would take a look at
21 this particular set of documents.

22 A. (Whereupon, the witness reviews a document.)

23 Okay.

24 Q. Do you recognize what's in Exhibit 229?

25 A. Yes. All except for this top.

1 Q. Okay. And I've conferred with counsel about that.
2 We're going to remove that top page. But looking at the
3 items beneath the top page.

4 A. Uh-huh.

5 Q. Okay. When did you see those particular items
6 first?

7 A. You mean like this --

8 Q. Yes.

9 A. -- this billing invoice?

10 Q. Don't show that to the jury. If you could just
11 hold it down in front of you. Those particular items that
12 are contained in Exhibit 229, do you recall seeing those on a
13 prior occasion?

14 A. Not prior to opening the mail that day.

15 Q. Right. Well, that's what I'm asking you about.
16 When you opened the mail that day on or about August 22nd of
17 2008, is that the first time you saw those items?

18 A. Yes.

19 Q. Okay. And they were the box of books; right?

20 A. Right.

21 Q. Okay. And did you have to sign to receive those
22 books in some way?

23 A. I don't think so.

24 Q. They were just delivered to the UBS office?

25 A. Yes.

1 Q. And you took custody of them because you were
2 opening the mail that day?

3 A. Right.

4 Q. Okay. And upon taking custody of those items, and
5 these are the items in Exhibit 229; is that right?

6 A. These are the items that were in the box of books.

7 Q. Yes.

8 A. Yes.

9 Q. Okay. Upon taking custody of those items, what
10 did you do?

11 A. I called regional counsel for UBS.

12 Q. Did you think this -- for what reason did you call
13 regional counsel? And before you answer that, I don't want
14 you to get into your communication with your attorney. Okay.
15 So please don't tell me what you and your attorney
16 communicated about.

17 A. Uh-huh.

18 Q. Was there a particular reason why you called
19 regional counsel for UBS?

20 A. Because it was unusual.

21 Q. And what did you think was unusual about the items
22 in Exhibit 229?

23 A. That these books would come to the office.

24 Q. Had you ever intercepted -- and I don't mean that
25 in an improper way -- had you ever intercepted any mail of

1 this nature in the past prior to this time in August 2008?

2 A. No.

3 Q. At that time were you aware that Mr. DeMocker had
4 been the subject of a criminal investigation?

5 A. Yes.

6 Q. And was that part of the reason that this
7 Exhibit 229 got your attention?

8 A. Yes.

9 Q. And is that why you contacted the UBS regional
10 counsel?

11 A. Yes.

12 MR. BUTNER: At this time I'd move for the
13 admission of Exhibit 229.

14 Q. Is that a true and accurate copy of the items that
15 you received on or about August 22nd of the year 2008?

16 A. (Whereupon, the witness reviews a document.)

17 Yes.

18 MR. BUTNER: I'd move for the admission of
19 Exhibit 229 at this time, Judge, minus the cover sheet as I
20 have shown to Mr. Hammond.

21 THE COURT: Mr. Hammond.

22 MR. HAMMOND: Your Honor, I think that the
23 form of the question was unintentionally misleading. The
24 books themselves are not attached to the exhibit. What is
25 attached is what appears to be a Xerox copy of a cover page

1 of the books. And with that understanding, we have no
2 objection.

3 THE COURT: 229 is admitted without the first
4 page. That is going to be removed.

5 MR. BUTNER: Thank you, Judge.

6 Q. And what were those books that were sent and you
7 received on or about August 22nd of 2008?

8 MR. HAMMOND: Objection to the form of the
9 question. Ambiguous.

10 THE COURT: What were the books?

11 BY MR. BUTNER:

12 Q. What were the books? What were the titles of the
13 books that you received on that date?

14 THE COURT: You may answer.

15 THE WITNESS: I don't recall the exact titles.

16 BY MR. BUTNER:

17 Q. You have the exhibit right in front of you, you
18 can take a look at it.

19 A. Okay.

20 MR. HAMMOND: Your Honor, if counsel is asking
21 her to just read the titles off of the invoice, the documents
22 in evidence, that's fine with me.

23 THE COURT: Okay. You may do that. Go ahead
24 and respond to Mr. Butner's question.

25 THE WITNESS: *How to be Invisible. Advanced*

1 *Fugitive, it looks like. Cover your Tracks without Changing*
2 *your Identity. And The International Fugitive.*

3 BY MR. BUTNER:

4 Q. And if I understood your earlier statement, it was
5 unusual for you to receive items of this nature in the mail
6 in your capacity as an administrative manager; is that
7 correct?

8 A. Yes.

9 Q. And what was it about these particular books that
10 caused you concern?

11 MR. HAMMOND: Objection. Asked and answered.

12 THE COURT: Overruled. You may answer that,
13 ma'am.

14 THE WITNESS: Because I was aware of an
15 investigation going on and because of the titles.

16 BY MR. BUTNER:

17 Q. Were you personally acquainted with Mr. DeMocker
18 at that time?

19 A. Barely. In a professional way, yes.

20 Q. 525, 26 and 27. Let me show you what's been
21 marked for identification purposes -- actually, these have
22 already been admitted, in fact, as Exhibits 525, 526, and
23 527.

24 Do you recognize those photographs of
25 those books?

1 A. Yes.

2 Q. Are those the books that you received, three of
3 them?

4 A. Yes.

5 Q. And the fourth one, I think, you indicated was *The*
6 *International Fugitive*; is that correct?

7 A. Yes.

8 Q. Okay. That's not depicted in the photographs;
9 right?

10 A. Right.

11 MR. BUTNER: Okay. Thank you. I don't have
12 any further questions of this witness at this time.

13 THE COURT: Thank you.

14 Mr. Hammond.

15 CROSS-EXAMINATION

16 BY MR. HAMMOND:

17 Q. Good afternoon, Miss Wheeler.

18 You and I have met before.

19 A. Yes.

20 Q. We met actually a couple of months ago earlier
21 this year?

22 A. Right.

23 Q. I came to your offices in Phoenix?

24 A. Uh-huh, that's right.

25 Q. By the way, did you say that UBS was United Bank

1 of Switzerland?

2 A. There are two versions, United Bank of Switzerland
3 and Union Bank of Switzerland.

4 Q. Are they two different companies?

5 A. No. Two companies that merged together in the
6 1800's.

7 Q. What's the -- is the name now United Bank of
8 Switzerland?

9 A. You know, they don't even call it that. It's UBS.

10 Q. It's just UBS. In fact, there are employees who
11 have no idea what UBS means?

12 A. That's right.

13 Q. Or what the acronym means?

14 A. That's true.

15 Q. They know that they are financial advisors, and
16 one of the largest financial advisor firms not only in the
17 United States but local?

18 A. Right.

19 Q. When I met with you, you recall that at that time
20 you did have counsel present, and I had a gentleman with me
21 at the time?

22 A. Right.

23 Q. And we had what turned out, actually, to be two
24 short visits; do you remember that?

25 A. Yes.

1 Q. The first visit was one in which I informed you
2 that your name had been given to us as somebody who was on
3 the witness list from the prosecution in this case?

4 A. Yes.

5 Q. And you remember that we had a little friendly
6 conversation about why you were being called as a witness?

7 A. Right.

8 Q. And I think you couldn't figure out what it might
9 be and nor could we?

10 A. Right.

11 Q. Do you remember that?

12 A. Right, uh-huh.

13 Q. And so we then parted. And is that right?

14 A. Yes.

15 Q. And sometime later, not very long later, maybe
16 only a few minutes later, your counsel came and found us. I
17 don't know if you knew where we were, but we were getting in
18 our cars downstairs, and asked us if we might come back for
19 just a second because it had occurred to you that there might
20 be one issue that they might be concerned with?

21 A. Right.

22 Q. And so we came back upstairs to your lovely
23 offices up there, and you then told us that one possibility
24 was that you had been involved in communication about these
25 books?

1 A. Yes.

2 Q. And you told us essentially the same thing that
3 you've said here this afternoon?

4 A. Right.

5 Q. You made a -- or at your direction, a copy of the
6 cover of those four books?

7 A. Yes.

8 Q. And then did you give an instruction to an
9 employee at UBS with respect to what you wanted her to do
10 with the books themselves?

11 A. Yes.

12 Q. What was that instruction?

13 A. I told her to put them away, keep them in the
14 office, put them away, and if Steve came in to ask for them
15 that he could have them.

16 Q. And you gave that instruction to a woman whose
17 name is what? Do you recall her name?

18 A. Liz Minard.

19 Q. Liz Minard, is that how you pronounce it?

20 A. Yes.

21 Q. It's spelled that way too, isn't it M-I-N-E-R-D?

22 A. A-R-D.

23 Q. A-R-D. But it's pronounced --

24 A. Minard.

25 Q. -- Minard, with the emphasis on the first

1 syllable?

2 A. Right.

3 Q. You gave her that instruction saying if he comes
4 and asks for them, give them to him?

5 A. Right.

6 Q. And you never spoke to Steve DeMocker about this
7 delivery at all?

8 A. That's correct.

9 Q. You said that it was the policy of UBS to have
10 someone other than a financial advisor open the mail?

11 A. Right.

12 Q. Would you explain to us why that's the policy at
13 UBS?

14 A. It's a securities industry regulation, and so all
15 of the financial services firms are held to this. Every
16 financial services firm has to have a policy in place of
17 someone other than financial advisors opening up the mail,
18 usually in a secure area, so that if any clients complain or
19 anything in writing, it goes -- the complaint goes directly
20 to a manager and doesn't get intercepted by the financial
21 advisor.

22 Q. So really what this is, among other things, is a
23 way for financial firms that are engaged in managing the
24 money of other people to protect themselves against
25 possibilities of such things as fraud?

1 A. Right.

2 Q. Money laundering?

3 A. Right.

4 Q. Things that in the entire industry that there has
5 always been concern at some level?

6 A. Yes.

7 Q. And at various times, more level concern than at
8 others, but this is one of the protections that all financial
9 advisor firms, at least as of the 2000's, were strictly
10 following?

11 A. Yes.

12 Q. Is there any possible doubt that someone could be
13 a financial advisor employed by UBS and be unaware that that
14 was a rule?

15 A. No.

16 Q. It really isn't. I mean, if you were employed as
17 a financial advisor, part of your training and part of your
18 day-to-day understanding of your job would be that there are
19 systems in place, like the mail opening system, to protect
20 against any possibility of wrongdoing or complaints being
21 made to get lost or anything like that?

22 A. Right.

23 Q. No reason that you know of for us to have any
24 doubt that Steve DeMocker was very well aware of that rule?

25 A. I am sure he was aware of it.

1 MR. HAMMOND: Okay. Thank you very much.

2 I have no further questions.

3 THE COURT: Thank you, Mr. Hammond.

4 Any redirect, Mr. Butner?

5 MR. BUTNER: Just a little bit, Judge. Thank
6 you.

7 REDIRECT EXAMINATION

8 BY MR. BUTNER:

9 Q. And so now I think we have an understanding of the
10 reason for the policy; right?

11 A. Yes.

12 Q. So that you as an administrative manager could be,
13 if necessary, intercepting client complaints about financial
14 advisors that worked in the UBS office?

15 A. That's one reason.

16 Q. Okay. Were there other reasons?

17 A. The major reason is for customer complaints, but
18 any client correspondence we are required to time-stamp, make
19 copies, a manager has to initial it.

20 Q. So in other words, you're scrutinizing the
21 financial advisor's business practices?

22 A. That's one method.

23 Q. Is that right?

24 A. Yes.

25 Q. Okay. Were you looking for anything else when you

1 were going through the mail, so to speak, and opening the
2 mail back in August of 2008?

3 A. No. It's just a normal process.

4 Q. It's something that goes on every day at the UBS
5 office?

6 A. Right.

7 Q. Someone other than a financial advisor opens the
8 mail?

9 A. Yes.

10 Q. And you've told us what the reasons for the policy
11 were; right?

12 A. Yes.

13 Q. That's still a policy that's in place?

14 A. Yes.

15 Q. And do financial advisors receive personal mail at
16 their office on occasion?

17 A. If they do, that is opened also.

18 Q. They're aware when they receive that mail that
19 their personal mail could be opened also; right?

20 A. Not that it could be, that it will be.

21 Q. Right. That it would be opened?

22 A. Yes.

23 Q. And do they receive packages on occasion at the
24 UBS office directed to them personally?

25 A. Yes.

1 Q. And those things are opened; right?

2 A. Yes.

3 Q. And the reason that you drew this attention to
4 your counsel was because you were especially aware of
5 Mr. DeMocker's circumstances?

6 MR. HAMMOND: Objection. Beyond the scope of
7 cross.

8 THE COURT: Overruled. You can answer that.

9 THE WITNESS: Can you ask it again.

10 BY MR. BUTNER:

11 Q. And the reason that you drew this receipt of these
12 books in this package to your general counsel, or your -- I
13 should say "special counsel"?

14 A. Regional counsel.

15 Q. -- Regional counsel's attention is because you
16 were aware of Mr. DeMocker's circumstances; right?

17 A. Yes.

18 Q. There wasn't anything about the UBS policy that
19 compelled you to draw this to the attention of your regional
20 counsel; was there?

21 A. No.

22 Q. It could have come in, these packages with these
23 books, it could have come in and somebody else opened the
24 mail and not knowing Mr. DeMocker's circumstances, they would
25 have just passed it on to Mr. DeMocker; right?

1 MR. HAMMOND: Objection. Calls for
2 speculation and beyond the scope of cross-examination.

3 THE COURT: Sustained.

4 BY MR. BUTNER:

5 Q. There was nothing about this package of books that
6 came to Mr. DeMocker that fit within UBS's policy about
7 scrutinizing client communications; was there?

8 A. No.

9 Q. So there was nothing about this package of books
10 that would have required that it be brought to the attention
11 of a UBS "higher-up" or the regional counsel; right?

12 A. Right.

13 Q. You did that out of a sense of duty on your part;
14 isn't that correct?

15 A. I'm not sure I follow the question.

16 MR. HAMMOND: Object to the form of the
17 question.

18 MR. BUTNER: You were aware that -- I'll
19 withdraw the question, Judge.

20 Q. You were aware that Mr. DeMocker was being
21 investigated in connection with the murder of his ex-wife?

22 A. Yes.

23 MR. HAMMOND: Objection. Asked and answered.

24 THE COURT: Sustained.

25 MR. BUTNER: All right.

1 Q. You were aware that -- when you gave this to, this
2 package of books, or rather when you notified regional
3 counsel about this package of books, were you concerned that
4 Mr. DeMocker was planning on fleeing as a result of the
5 criminal investigation?

6 A. No.

7 Q. You noticed what the subject matter was of these
8 books; right?

9 A. Yes.

10 Q. And you already testified that subject matter
11 caused you concern; right?

12 A. Yes.

13 Q. And so was your concern -- what was your concern?

14 MR. HAMMOND: Objection. Asked and answered
15 and beyond the scope of cross-examination. She answered the
16 question on direct. She's already answered it once on
17 redirect, twice on redirect.

18 THE COURT: Overruled. You may answer that.

19 THE WITNESS: What was my concern?

20 BY MR. BUTNER:

21 Q. That's correct.

22 A. You know, I never really believed that he did it,
23 that he sent those books to the office.

24 MR. BUTNER: Judge, I move to strike. It's
25 not responsive.

1 THE COURT: Mr. Hammond.

2 MR. HAMMOND: Of course, I oppose his motion
3 to strike. I mean, he asked the same question four times and
4 the witness finally gave him the answer that I think was
5 eventually going to be called for.

6 THE COURT: Overruled. That was the answer.

7 MR. BUTNER: Okay. I'll follow-up on that,
8 Judge.

9 Q. So you didn't think Mr. DeMocker killed his
10 ex-wife; right?

11 A. I didn't say that. I didn't think he ordered
12 those books sent to the office.

13 Q. I see. But you felt it was important to forward
14 the books on to regional counsel?

15 MR. HAMMOND: Object to the form of the
16 question. Misstates the evidence.

17 THE COURT: Sustained.

18 BY MR. BUTNER:

19 Q. You forwarded these books -- let me just back up.

20 You just testified that you didn't think
21 Mr. DeMocker had these books sent to him; is that correct?

22 A. That would be my opinion.

23 Q. Your opinion. But they were addressed to
24 Mr. DeMocker; is that right?

25 A. Yes.

1 Q. And the documents that you have in front of you as
2 Exhibit 229, they indicate that the books were sent to
3 Mr. DeMocker at the UBS office; right?

4 A. Yes.

5 MR. HAMMOND: Objection. Leading his own
6 witness.

7 THE COURT: Sustained.

8 BY MR. BUTNER:

9 Q. The address the books were sent to, what was that
10 address?

11 MR. HAMMOND: Same objection, and asked and
12 answered.

13 THE COURT: Overruled. You may answer that,
14 ma'am.

15 THE WITNESS: It was the address of the UBS
16 office in Prescott.

17 BY MR. BUTNER:

18 Q. And when you met with the attorneys for
19 Mr. DeMocker, there wasn't anybody from the prosecutor's
20 office present; was there?

21 A. When I met with the attorneys from Mr. DeMocker's
22 office?

23 Q. Right. For Mr. DeMocker, Mr. Hammond. You met
24 with Mr. Hammond; right?

25 A. Yes.

1 Q. There wasn't anybody from the prosecutor's office
2 present then; was there?

3 A. Correct.

4 Q. And you're here appearing pursuant to a subpoena;
5 right?

6 A. Yes.

7 MR. BUTNER: Thank you. No further questions.

8 THE COURT: Thank you, counsel.

9 Do the jurors have any questions?

10 Okay. Ma'am, if you would please stay
11 seated there for a moment, there are some jury questions.

12 Phil, are there anymore questions?

13 THE BAILIFF: Another one or two.

14 THE COURT: Roxanne, I am going to have a side
15 bar rather than recessing.

16 (Whereupon, a discussion was held at side bar
17 which was reported but is not contained herein.)

18 QUESTIONS BY THE JURY

19 THE COURT: I will ask the questions and the
20 lawyers may choose to follow-up.

21 If you had not been there to open the
22 mail that day, who would have done it?

23 THE WITNESS: The assistant that was working
24 there, Liz Minard.

25 THE COURT: Follow-up, Mr. Butner?

FOLLOW-UP QUESTIONS

BY MR. BUTNER:

Q. Liz Minard, was she an assistant to Mr. DeMocker?

A. She was an assistant to the entire office.

Q. And did she receive her pay, a percentage of her pay from Mr. DeMocker's transactions in the UBS office?

A. That I don't know.

Q. What was her actual job title?

A. Client Service Assistant.

Q. And was she part of Mr. DeMocker's team?

A. She had just started as an assistant there. She had moved from Sedona, so I really don't know if there was a formal team.

Q. Mr. DeMocker worked with who else in the office as part of his team; do you know?

A. At what point in time?

Q. The date of these books, August of 2008.

A. I don't believe he was part of the team then.

MR. BUTNER: No further follow-up on that particular question, Judge. Thank you.

THE COURT: Mr. Hammond?

MR. HAMMOND: No questions.

QUESTIONS BY THE JURY

THE COURT: What was the return address of the box of books?

1 THE WITNESS: That was Steven DeMocker's
2 address.

3 THE COURT: Follow-up, Mr. Butner?

4 MR. BUTNER: No. No follow-up questions,
5 Judge. Thank you.

6 THE COURT: Mr. Hammond?

7 FOLLOW-UP QUESTIONS

8 BY MR. HAMMOND:

9 Q. I'm not sure that I understood what the question
10 was. Was the question: "What was the return address" as in
11 the address that they would go back to if they were not
12 delivered?

13 A. I'm sorry. That would have been Amazon.com.

14 THE COURT: Mr. Butner, anything else on that?

15 MR. BUTNER: No.

16 THE COURT: Thank you.

17 QUESTIONS BY THE JURY

18 THE COURT: Did you notify the police about
19 these books?

20 THE WITNESS: No, I did not.

21 THE COURT: If not, did you not because these
22 books had nothing to do with UBS business?

23 THE WITNESS: I did not because I was
24 representing UBS in my capacity on the day that I opened the
25 books, and so I called regional counsel.

1 THE COURT: Mr. Butner?

2 FOLLOW-UP QUESTIONS

3 BY MR. BUTNER:

4 Q. Were you concerned that Mr. DeMocker's receipt of
5 these books might somehow damage UBS?

6 A. No.

7 Q. You simply believe that this was a mistake that
8 Mr. DeMocker received these books?

9 A. No. If you want my opinion?

10 MR. BUTNER: I'm not asking you for your
11 opinion. Thank you.

12 THE COURT: Mr. Hammond.

13 Mr. Butner, do you have any further
14 follow-up?

15 MR. BUTNER: Yes. I have.

16 Q. Did you think Mr. DeMocker was not so stupid as to
17 order those books?

18 MR. HAMMOND: Objection, Your Honor.

19 THE COURT: Sustained.

20 MR. HAMMOND: Totally improper question.

21 THE COURT: Sustained, sustained.

22 MR. BUTNER: No further follow-up.

23 THE COURT: Mr. Hammond?

24 MR. HAMMOND: No.

25 THE COURT: All right.

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QUESTIONS BY THE JURY

THE COURT: Were there two copies of *The International Fugitive* in the box making the total number of books in the box five?

THE WITNESS: No.

THE COURT: Follow-up, Mr. Butner?

FOLLOW-UP QUESTIONS

BY MR. BUTNER:

Q. So there was only one copy of *The International Fugitive*; is that correct?

A. Yes.

Q. And one copy of each of the other three?

A. Yes.

MR. BUTNER: No further questions on that.
Thank you.

THE COURT: Mr. Hammond?

MR. HAMMOND: Nothing.

THE COURT: Okay.

Thank you. Then may this witness be excused?

MR. BUTNER: Judge, I'd ask that she be subject to recall as a records custodian. I think we've got those issues worked out, but just in the event that we don't, we ask that she be subject to recall.

THE COURT: Okay. Mr. Hammond, anything in

1 addition?

2 MR. HAMMOND: No.

3 THE COURT: All right.

4 Miss Sims, you will be excused for today
5 as a witness and that could be it. You will be subject to
6 recall for limited purposes indicated by Mr. Butner. His
7 office will be in touch with you. If that occurs, you will
8 still be under subpoena, technically.

9 Please remember that the Rule of
10 Exclusion of Witnesses applies in this case. This means that
11 you cannot communicate in any way with other witnesses about
12 your testimony or about any other aspect of this case until
13 all witnesses have testified. It is best that you not
14 discuss this case with anyone until the trial is completed.
15 However, you may talk to the attorneys about the case as long
16 as no other witnesses are present.

17 Do you understand?

18 THE WITNESS: Yes.

19 THE COURT: Thank you. Please watch your step
20 when you step down. You may be excused.

21 JUROR NO. 2: Your Honor, I asked a yes or no
22 question and she didn't answer it.

23 THE COURT: Ma'am.

24 JUROR NO. 2: The last one you asked.

25 THE COURT: Ma'am, please juror, remember you

1 will see this in the preliminary instructions. It is in
2 there about jury questions and when they are asked and the
3 considerations the Court has to make in asking questions. So
4 I am going to direct you right to the preliminary
5 instructions, all of you, because it addresses juror
6 questions. I can expand on that further at some point, but
7 at this time please consult the preliminary instructions that
8 I have now provided. Thank you.

9 You may step down.

10 Counsel.

11 MR. HAMMOND: Your Honor, can we have a brief
12 conversation with you at side bar?

13 THE COURT: Yes, you may.

14 (Whereupon, a discussion was held at side bar
15 which was reported but is not contained herein.)

16 THE COURT: Thank you. Ladies and gentlemen,
17 in addition to legal matters, I will also talk a bit about
18 scheduling, and there is another witness that the State
19 wishes to put on the stand today, and we are going to need to
20 take a little break before that witness testifies. So please
21 be ready to resume at five after 3:00. Thank you.

22 Remember the admonition.

23 (Whereupon, the jury exits the courtroom.)

24 (Brief recess.)

25 (Whereupon, the jury enters the courtroom.)

1 THE COURT: The record will show the presence
2 of the defendant, all of the attorneys and the jury.

3 Mr. Butner.

4 MR. BUTNER: Thanks, Judge. The State would
5 call John Farmer to the witness stand, please.

6 THE COURT: Sir, if would you please stand
7 where the bailiff directs and then raise your right hand and
8 be sworn by the clerk.

9 THE CLERK: You do solemnly swear or affirm
10 under the penalty of perjury that the testimony you are about
11 to give will be the truth, the whole truth, and nothing but
12 the truth, so help you God?

13 THE WITNESS: Yes, I do.

14 THE COURT: Please be seated here at the
15 witness stand.

16 Would you please begin by stating your
17 full name.

18 THE WITNESS: John Hodge Farmer.

19 THE COURT: Thank you.

20 Mr. Butner.

21 MR. BUTNER: Thank you, Judge.

22 JOHN HODGE FARMER,
23 called as a witness, having been duly sworn, testified as
24 follows:
25

DIRECT EXAMINATION

BY MR. BUTNER:

Q. Mr. Farmer, what is your present occupation, sir?

A. I'm working part-time at Prescott College.

Q. And what do you do at Prescott College?

A. I'm an instructor in the education department.

Q. And how long have you been an instructor at Prescott College?

A. Off and on for 13 years, mostly on.

Q. Okay. And are you a graduate of Prescott College?

A. Yes, sir, I am.

Q. When did you graduate from Prescott College?

A. 1992.

Q. And are you acquainted with the defendant in this case, Steven DeMocker?

A. By "acquainted" you mean?

Q. Do you know him?

A. Yes.

Q. How long have you known Mr. DeMocker?

A. Since I was a student at Prescott College in 1988, first started.

Q. And were you acquainted with his former wife, the victim in this case, Virginia Carol Kennedy?

A. Yes.

Q. And how long had you known her prior to the time

1 of her death?

2 A. Approximately the same amount of time.

3 Q. Did you meet them both at Prescott College?

4 A. Yes.

5 Q. At some point in time did you become employed at
6 UBS in Prescott, Arizona?

7 A. Yes.

8 Q. Would you tell us when that was, when you first
9 became employed at UBS?

10 A. It was the end of May, 2007. I think it was right
11 around May 25th.

12 Q. And how was it that you came to be employed at UBS
13 in Prescott?

14 A. I was recruited by Mr. DeMocker.

15 Q. Did you have to undergo any specialized training
16 in order to become a worker at UBS, and I'll ask you more
17 about what you did in a few minutes?

18 A. Yes.

19 Q. Tell us what training you underwent?

20 A. There is a six-month study period where you're
21 preparing to take several exams to become licensed.

22 Q. Had you done that prior to going to work in May of
23 2007?

24 A. No.

25 Q. So you were in that training process at the time?

1 A. Yes.

2 Q. And how was it that Mr. DeMocker recruited you to
3 work at UBS?

4 A. I believe I ran into him at a coffee shop, and was
5 expressed to him that I was seeking alternative employment.

6 Q. What were you doing at the time?

7 A. I was working for Prescott College.

8 Q. And what took place when you ran into him at the
9 coffee shop?

10 A. He told me to give him a call.

11 Q. And when was this, approximately?

12 A. In March, a couple of months prior to May.

13 Q. March of 2007?

14 A. Correct. Approximately, not exactly sure but
15 around then.

16 Q. Okay. So once you went to work at UBS, and that
17 was in May of 2007; right?

18 A. Yes.

19 Q. Did you enter into the training program?

20 A. Yes.

21 Q. And what was the training program for?

22 A. To get licensed to become a financial advisor.

23 Q. And you indicated that it lasted approximately six
24 months?

25 A. Yes.

1 Q. Did you ultimately get licensed?

2 A. Ultimately I did, I struggled through the test.
3 It took me a couple of months longer, but I finally got
4 there.

5 Q. So about eight months?

6 A. Correct.

7 Q. When were you licensed as a financial advisor?

8 A. I don't recall what my actual first day of being
9 licensed was, but approximately around that time.

10 Q. Were you licensed as a financial advisor in July
11 of 2008?

12 A. Yes.

13 Q. And were you still working at the Prescott office,
14 the Prescott UBS office, on or about the first part of July
15 of the year 2008?

16 A. Yes.

17 Q. What was your job at the UBS office in July of
18 2008?

19 A. I was trying to build a "book of business" and get
20 started as a financial advisor.

21 Q. And who else worked in the office, the UBS office
22 at that time?

23 A. Exactly when?

24 Q. July of 2008, the first part.

25 A. At that particular time it was just me and

1 Mr. DeMocker.

2 Q. Were you working in some capacity for

3 Mr. DeMocker?

4 A. No.

5 Q. Was there anybody else that worked in some
6 capacity either with or for Mr. DeMocker at that time, to
7 your knowledge?

8 A. In that office?

9 Q. Not necessarily in that office, but at UBS.

10 A. We were -- there was no one in the office at that
11 time. We were in transition between client service
12 associates or receptionists, and I think he had been
13 temporarily appointed one from Phoenix.

14 Q. You say in transition in terms of client service
15 associates. What is a client service associate?

16 A. A client service associate is a receptionist.
17 They do a lot of talking with clients. They are generally
18 not allowed to do any actual advising or trading. They work
19 as a representative typically for the financial advisor to
20 answer phones and talk to clients, make appointments,
21 scheduling, et cetera.

22 Q. And you indicated you were in transition at the
23 Prescott UBS office at the start of July of 2008. What did
24 you mean by that?

25 A. We -- the one who had been prior was on -- I don't

1 know what her exact status was at the time, but she had taken
2 a leave for having a child, and we were looking for a
3 replacement.

4 Q. And within the company of UBS, was there anybody
5 that was working with Mr. DeMocker, to your knowledge, as of
6 July 1st of the year 2008?

7 A. I don't understand the question.

8 Q. Well, Mr. DeMocker was a financial advisor; right?

9 A. Yes.

10 Q. Did he have anybody as part of a team or group
11 that was working with him at UBS?

12 A. He had been assigned a client service associate
13 temporarily, someone from Phoenix. I don't recall who that
14 person was. I think it even might have changed a few times.
15 As well as I believe at that time he was teamed with
16 Barbara O'non, and I believe, but I am not quite certain,
17 with Pat Berkensaw {phonetic spelling}.

18 Q. And when you say "teamed", what do you mean by
19 that?

20 A. They had signed an agreement to divide their
21 workload and client contact and assets under management.

22 Q. So they all kind of worked together?

23 A. Yes.

24 Q. Did a client service associate come into the
25 office at a subsequent time and assume the duties of the

1 receptionist, client service associate?

2 A. Yes.

3 Q. And who was that?

4 A. That was Liz Minard.

5 Q. And was Liz Minard ever teamed with Mr. DeMocker,
6 to your knowledge?

7 A. Not that I know of.

8 Q. So what were Liz Minard's duties in the Prescott
9 UBS office when she came to work there, then?

10 A. She answered phones, she scheduled appointments,
11 she interfaced with clients when everyone else was busy.

12 Q. And was that true in regard to your clients, as
13 well as those of Mr. DeMocker?

14 A. No.

15 Q. Did she do that for you and your clients?

16 A. No.

17 Q. Did she do that for Mr. DeMocker and his clients?

18 A. Yes.

19 Q. Were there any other financial advisors in the
20 office besides you and Mr. DeMocker?

21 A. No.

22 Q. So, actually, she only interfaced with clients on
23 behalf of Mr. DeMocker?

24 A. She served in the receptionist capacity for me,
25 but she didn't really, I didn't -- officially had not been

1 assigned a client service associate.

2 Q. I see. So drawing your attention specifically to
3 the date of July the 2nd of the year 2008. Do you remember
4 that day?

5 A. Kind of.

6 Q. Approximately -- did you go to work that day?

7 A. Yes.

8 Q. Approximately what time did you arrive at work
9 that day if you can recall?

10 A. 7:00 a.m.

11 Q. And was that the usual time for you to arrive?

12 A. Between 6:00 and 7:00 a.m.

13 Q. And then for what reason did you arrive between
14 those hours?

15 A. Typically, we would -- you want to get there as
16 early as possible so you could watch the markets open on the
17 east coast and prepare yourself for your day.

18 Q. So you would see what was going on with the stock
19 market back on the east coast, or stock markets I should say?

20 A. Yes.

21 Q. And on the date of July the 2nd of 2008, do you
22 recall how late you worked that day?

23 A. I left between 4:00 and 4:30.

24 Q. 4:00 and 4:30 in the afternoon?

25 A. Yes.

1 Q. Where were you residing at that time?

2 A. I was residing at 1412 Oregon Avenue.

3 Q. And did you own or rent, or what was the status of
4 your residency then?

5 A. I was renting.

6 Q. And from whom?

7 A. From Renee Girard.

8 Q. She was your landlord?

9 A. Yes.

10 Q. How long had you rented from Renee Girard?

11 A. I believe just over five years.

12 Q. So you'd lived there for awhile?

13 A. Yes.

14 Q. And did Renee Girard have any business going on in
15 the UBS office to your knowledge?

16 A. No.

17 Q. So going back to the date of July the 2nd of the
18 year 2008, you left the office at approximately 4:00 or 4:30
19 in the afternoon?

20 A. Yes.

21 Q. When you left the office at that time, was there
22 anybody else at the office?

23 A. Yes.

24 Q. Who was there at the office when you left?

25 A. Mr. DeMocker.

1 Q. Did you say goodnight to him?

2 A. I don't recall. I don't believe I did, but --

3 Q. Do you have a recollection as to what he was doing
4 when you left?

5 A. No. He was in his office. My office was closer
6 to the exit door than his was.

7 Q. So how is it that you know that he was in his
8 office when you left?

9 A. Well, he would have to walk by my door if he was
10 going to leave. And then just -- there was just me and him,
11 so I knew he was there.

12 Q. Had you seen him during the course of the day
13 working at the office that day?

14 A. Yes.

15 Q. So you left at approximately 4:00 to 4:30. Where
16 did you go at that time?

17 A. I think I went home first, then to my girlfriend's
18 house, and then out to dinner with some old friends.

19 Q. At any point in time that day or evening did you
20 call Mr. DeMocker on the telephone?

21 A. No.

22 Q. When you were working at the UBS office on July
23 the 2nd, how did you do business as a financial advisor?
24 What were the tools of your trade, so to speak?

25 MR. SEARS: Relevance.

1 THE COURT: Overruled. You may answer that.

2 THE WITNESS: I don't understand the question.

3 BY MR. BUTNER:

4 Q. Well, you know lawyers, we use computers, pens and
5 paper and things of that nature. What did you use to perform
6 your job tasks when you worked at the UBS office?

7 A. Only a computer.

8 Q. Okay. And what did you use the computer for?

9 A. Scheduling, tracking clients, e-mail, looking at
10 assets under management, getting stock market reports,
11 regular financial briefings from the firm.

12 Q. And did your computer, did it contain your private
13 business files, so to speak?

14 A. Yes.

15 Q. And by that I mean you had specific clients as a
16 financial advisor; is that correct?

17 A. Yes.

18 Q. And you say you checked your assets under
19 management with your computer. Would you explain to us what
20 that process meant?

21 A. It's just your client list and what they're
22 invested in and how much they're invested.

23 Q. And when you checked on the status of those
24 assets, what were you doing?

25 A. Managing my book of business, checking in on

1 things, keeping up-to-date, current.

2 Q. Then would you confer with your clients about that
3 kind of information that you had gathered?

4 A. If need be.

5 Q. And your client list, was that something that you
6 shared with other people in the UBS office?

7 A. We could, there were certain people that could
8 view the information on my computer.

9 Q. And how is it that they were able to view the
10 information on your computer?

11 A. Management had access and other people, if they
12 wanted access, you could allow them access through a button
13 you push and a key you press in.

14 Q. And you would let them see what you were doing?

15 A. Yes. That's in team arrangements. For example,
16 you would enable other people on your team to be able to see
17 what you had going on.

18 Q. Were you on Mr. DeMocker's team?

19 A. No.

20 Q. Was he on your team?

21 A. No.

22 Q. Did you have -- did Mr. DeMocker have access to
23 your computer to look at what you were doing?

24 A. I don't recall.

25 Q. Did you have access to his computer to see what he

1 was doing?

2 A. Yes, certain things I could see. I could see his
3 performance history and everyone in the team and office,
4 including management, could see pending trades or trades that
5 had just gone through.

6 Q. And so were you able to go in and operate
7 Mr. DeMocker's computer when you wanted to?

8 A. No.

9 Q. Why not?

10 A. The access you enable for other people is very
11 limited. It only allows you to do certain things.

12 Q. And was your computer password protected?

13 A. Yes.

14 Q. And to your knowledge was Mr. DeMocker's computer
15 password protected?

16 A. Yes.

17 Q. Had you ever tried to use Mr. DeMocker's computer?

18 A. No.

19 Q. Had you ever checked on Mr. DeMocker's computer to
20 see if it was on or off when you went out for the evening?

21 A. No.

22 Q. You talked about people that were on
23 Mr. DeMocker's team. You mentioned Barbara O'non. What was
24 Barbara O'non's job title in the UBS office, to your
25 understanding, as of July of 2008?

1 A. She was a financial advisor.

2 Q. And did you have an understanding as to what was
3 going on in the team of Steven DeMocker and Barbara O'non in
4 terms of their business affairs in the UBS office as of the
5 1st of July of 2008?

6 A. Yes.

7 Q. What was going on between Barbara O'non and
8 Steve DeMocker concerning their business as of that time
9 frame?

10 MR. SEARS: Relevance. Foundation. Lack of
11 personal knowledge. Calls for hearsay.

12 THE COURT: If there is personal knowledge, it
13 may be answered, so I will sustain as to the form of the
14 question.

15 MR. BUTNER: I will ask some foundational
16 questions, Judge.

17 Q. Did you have personal knowledge concerning the
18 business relationship between Steven DeMocker and
19 Barbara O'non in the month of June of 2008 leading into July
20 of 2008?

21 A. Still don't understand the question. What do you
22 mean by personal knowledge?

23 Q. Had you observed what was going on in terms of the
24 business relationship between Steve DeMocker and
25 Barbara O'non in the UBS office in June leading up to July of

1 2008?

2 A. Yes.

3 MR. SEARS: Form of the question. "Business
4 relationship," vague and ambiguous.

5 THE COURT: He answered yes. Overruled. That
6 answer stands.

7 BY MR. BUTNER:

8 Q. And when we talked about the business relationship
9 between Steve DeMocker and Barbara O'non, would you tell us
10 what you mean by that?

11 A. They were partnered in a team, they had a team
12 agreement.

13 Q. And was this general knowledge in the UBS office
14 in Prescott?

15 A. Yes.

16 Q. And how was it that they partnered and teamed
17 together, so to speak? What took place in that regard?

18 A. I wasn't with them at that time, so I don't know
19 exactly.

20 Q. They did business together?

21 A. Yes.

22 Q. Did they share clients?

23 A. Yes.

24 Q. And to your understanding, in some fashion did
25 they share income?

1 A. I don't know the particulars of the details, but
2 yes, they had some sort of sharing agreement arranged.

3 Q. You weren't privy to actually what the percentages
4 were or anything like that?

5 A. I think at some points they had both shared those
6 with me, but no, I had never seen an agreement or a contract
7 between the two of them.

8 Q. And so what was the status of the Steve DeMocker,
9 Barb O'non team in the UBS office on or about the 1st of July
10 of the year 2008?

11 MR. SEARS: Form of the question. Vague and
12 ambiguous.

13 THE COURT: Status, Mr. Butner? Sustained as
14 to the form of the question.

15 BY MR. BUTNER:

16 Q. Steve DeMocker and Barbara O'non were doing
17 business together in June and July of 2008; right?

18 A. Yes.

19 Q. Did you have personal knowledge as to how their
20 business relationship was doing as of that time?

21 A. Yes. I'm confused by what you mean by personal
22 knowledge.

23 Q. Did you personally observe what was going on
24 between Steve DeMocker and Barb O'non concerning their
25 business partnership in the UBS office?

1 A. Yes. They were in the process of unwinding their
2 business together and separating their book of business out.

3 Q. Separating their "book of business," what does
4 that mean?

5 A. It means they were hoping or wishing -- it was
6 their wish to dissolve their business relationship and go
7 separate ways, and management was in the process of assisting
8 them in figuring that out.

9 Q. And to your understanding, what did that
10 dissolving of their business relationship involve?

11 A. I don't understand the question.

12 Q. I can't ask you leading questions, okay. But they
13 were dissolving their business; right?

14 A. Yes.

15 Q. What does that mean? What were they doing with
16 their business?

17 A. They were teasing out or separating out assets and
18 clients, I think. I wasn't privy to any particular
19 information. This is just what I had heard.

20 MR. SEARS: Move to strike. Hearsay.

21 THE COURT: Granted.

22 BY MR. BUTNER:

23 Q. So you say they were separating out assets and
24 clients; is that correct?

25 A. Management was assisting them in that process.

1 Q. Okay. Does that mean that some clients were being
2 assigned to Mr. DeMocker and some clients were being assigned
3 to Ms. O'non?

4 A. They were in the process of determining that at
5 that time.

6 Q. Dividing up the book of business?

7 A. Yes.

8 Q. Between the two of them?

9 A. Yes.

10 Q. And were you aware that Mr. DeMocker had been in
11 divorce proceedings?

12 A. Yes.

13 Q. How is it that you became aware that Mr. DeMocker
14 was involved in divorce proceedings?

15 A. He told me. It was common knowledge.

16 Q. And had Mr. DeMocker resolved his divorce?

17 A. Yes. At that time, yes.

18 Q. Do you recall when his divorce was resolved?

19 A. Approximately around a month prior to -- are you
20 referring to July 2nd?

21 Q. Yes. We're talking -- we were talking about the
22 1st of July at that point in time. And when did his divorce
23 get finalized?

24 A. I don't remember the exact date, but approximately
25 three weeks, a month prior.

1 Q. And that was a divorce from Carol Kennedy; right?

2 A. Yes.

3 Q. So as of July 1st of the year 2008, Mr. DeMocker
4 had gotten a divorce approximately a month earlier; is that
5 correct?

6 A. I believe so, yes.

7 Q. And as of July 1st of the year 2008, he was
8 dissolving his business relationship with Barbara O'non?

9 A. Yes.

10 Q. And then going to the date of July 2nd of the year
11 2008, you left the office at between 4:00 and 4:30. Did you
12 return to the office at any point in time after that?

13 A. No.

14 Q. As you were leaving the office between 4:00 and
15 4:30, did you go and check Mr. DeMocker's computer in his
16 office?

17 A. No.

18 Q. Would there have been any reason for you to check
19 Mr. DeMocker's computer when you left the office on that day?

20 A. As I said, he was still there, so no.

21 Q. And in regard to the UBS computers, when you leave
22 the office, how do you deal with your computer? Do you turn
23 it off or do you leave it in some other status or what do you
24 do?

25 A. You turn it off, typically.

1 Q. And is there a reason why you would turn it off?

2 A. I don't know of any particular reason besides
3 that's just what you do, so that when you turn it on in the
4 morning it can upload new information is what I was told. I
5 don't know if that's true or not.

6 Q. So supposedly when you turn it on in the morning
7 it uploads new data?

8 A. Correct.

9 Q. And if you don't turn your computer off, and we
10 were talking about on or about July 2nd of the year 2008, if
11 you don't turn off your computer, what happens with your
12 computer?

13 A. After three minutes it goes to a screen saver.

14 Q. And what is a screen saver?

15 A. I believe it depends on the particular computer,
16 but it's either just a black screen or a black screen that
17 just says UBS on it.

18 Q. And if it goes to that screen saver, are you able
19 to access your computer after that?

20 A. Yes. You have to log back in.

21 Q. And when you log back in, does that require a
22 password?

23 A. Yes.

24 Q. So the computer basically goes to this -- what
25 status would you call that after three minutes?

1 A. Hibernation.

2 Q. Hibernation status. Okay. And then that
3 necessitates a logging back in in order the reactivate the
4 computer?

5 A. Yes.

6 Q. With a password?

7 A. Yes.

8 Q. Did you have Mr. DeMocker's password on July 2nd
9 of the year 2008?

10 A. No.

11 Q. Did you check his computer at any point in time on
12 the date of July 2nd of the year 2008 to see if it was on or
13 off?

14 A. No. I did not.

15 Q. And on the date of July 2nd of the year 2008, did
16 you ever call Mr. DeMocker's residence or his cell phone
17 after you left the office for the day between 4:00 and 4:30?

18 A. No. I did not.

19 Q. So you never called him and told him he needed to
20 go back to the office and turn his computer off?

21 A. No. I did not.

22 Q. Oh, to clarify, your rental status with Ms. Renee
23 Girard, what were you renting from Ms. Girard?

24 A. It was a guesthouse.

25 Q. And so where was that located relative to the main

1 house?

2 A. Right next door.

3 Q. And who lived in the main house?

4 A. Renee Girard.

5 Q. Were you and Ms. Girard friends as of July 2nd of
6 the year 2008?

7 A. Yes.

8 Q. Had you been friends for a significant period of
9 time?

10 A. Yes.

11 Q. How long?

12 A. Since I moved in there.

13 Q. So friends for five years or so?

14 A. Yes.

15 Q. And as of July 2nd of the year 2008, were you
16 aware of any relationship that Ms. Girard had with
17 Steve DeMocker?

18 A. Yes.

19 Q. And what was her relationship with Mr. DeMocker as
20 of July 2nd of the year 2008?

21 A. I don't know the exact particulars, but it
22 appeared that they were romantically involved from what I
23 understood.

24 Q. Would Renee Girard ever come to the UBS office?

25 A. Yes, sometimes.

1 Q. And that was while were you working there?

2 A. Yes.

3 MR. BUTNER: No further questions of this
4 witness at this time.

5 THE COURT: Thank you.

6 Mr. Sears.

7 CROSS-EXAMINATION

8 BY MR. SEARS:

9 Q. Mr. Farmer, let's talk about this computer
10 situation.

11 Are you saying that when you left at
12 night you turned the power off to your computer? You turned
13 it completely off?

14 A. It would depend, sometimes I would remember to and
15 sometimes I wouldn't.

16 Q. Okay. My understanding is that what UBS wanted
17 you to do to get these overnight uploads was to log off but
18 leave the power on and put the computer into a ready state.
19 Have you ever heard that description?

20 A. Yeah, that might be a more accurate description.

21 Q. Okay. And so your computer is on, in the sense
22 that it has power to it; right?

23 A. Yes.

24 Q. And if your monitor is still turned on, it's going
25 to go to some sort of a screen saver. It's is going to go

1 into hibernation and show either a black screen or the UBS
2 screen saver; right?

3 A. Yes.

4 Q. But you could just turn your monitor off and it
5 would be powered off separately, and you could still get
6 those uploads overnight; right?

7 A. Yes.

8 Q. Okay. And do you know what Steve's habit was in
9 June or July of 2008 with respect to his computer?

10 A. No. I do not.

11 Q. You told the police when you were interviewed a
12 couple of times by them that you didn't think it was
13 appropriate for you to be in Steve's office when he wasn't
14 there?

15 A. Yes.

16 Q. And you wouldn't expect him to be in your office
17 when you weren't there; right?

18 A. Yes.

19 Q. And what he did with his computer and how he used
20 it was really none of your business; correct?

21 A. Yes.

22 Q. And vice versa. You wouldn't expect him to be
23 messing around with your computer either; would you?

24 A. Yes.

25 Q. Yes, you would not? I'm sorry, maybe I didn't ask

1 the question clearly.

2 A. You can restate it.

3 Q. You wouldn't expect Steve to be messing around
4 with your computer; would you?

5 A. No.

6 Q. From time to time when you worked there, were
7 there power outages at the UBS office overnight?

8 A. I know that it had happened at some point. I
9 don't recall any specific one, but I know that it had
10 happened before, as well, before I got there. I had heard
11 that it had happened.

12 Q. I see. And what you were telling Mr. Butner, the
13 prosecutor here, about your knowledge of Steve's relationship
14 with Barbara O'non and the business thing, that's just what
15 other people told you or you were hearing from other sources;
16 right?

17 A. No. Both Barb and Steve had talked to me about it
18 at different points, as well.

19 Q. Right. But they never sat down with you and
20 briefed you on a regular basis about the breakup of their
21 business; right?

22 A. Not in any detail, no.

23 Q. They were your colleagues and your friends; right?

24 A. Yes.

25 Q. Okay. And so you all talked about work-related

1 things from time to time, I would assume; right?

2 A. Yes.

3 Q. Even though you weren't part of their team, this
4 is a very small office here in Prescott; right?

5 A. Yes.

6 Q. Okay. When did you leave UBS?

7 A. June of 2009.

8 Q. And did you go to work teaching at Prescott
9 College right then?

10 A. No, I took a large chunk of time off.

11 Q. Okay. Going back to July 2nd, the night that
12 Carol died, you told the police that your recollection was
13 that before you went home you went to the "Y" and went
14 swimming. Does that sound right?

15 A. That may be the truth, yeah. I don't recall
16 exactly.

17 Q. Was that something you were in the habit of doing
18 after work?

19 A. On a semi-regular basis, yeah.

20 Q. That was how you worked out?

21 A. Yes.

22 Q. You told the police that you were an outdoor
23 person and active yourself; right?

24 A. Yes.

25 Q. You said you don't have a clear recollection of

1 saying good-bye or goodnight or anything to Steve as you left
2 that night. Was that pretty typical?

3 A. Sometimes I would say good-bye and sometimes I
4 wouldn't. I wouldn't say there was any real consistency to
5 it.

6 Q. You didn't socialize after work with Steve in
7 2008; did you?

8 A. No.

9 Q. You worked and he worked, and that was your
10 relationship; right?

11 A. Correct.

12 Q. Now, when the police came the morning of July 3rd,
13 you actually let them into the office. They came with a
14 search warrant; is that right?

15 A. That's correct.

16 Q. Okay. That was a pretty chaotic morning, I would
17 imagine; right?

18 A. I don't understand what you mean by "chaotic."

19 Q. Do you often have police in your UBS office
20 seizing evidence and taking it away?

21 A. No.

22 Q. That would be out of the ordinary; right?

23 A. Yes.

24 Q. And had you been trying to do any business there,
25 it would have been a bit disruptive to have the police in the

1 next room searching; correct?

2 A. Correct.

3 Q. Did you know the police searched your office?

4 A. Yes.

5 Q. Okay. And they didn't take anything out of your
6 office?

7 A. No.

8 Q. Okay. And were you in the habit in 2007 and 2008,
9 which is really when you worked there; right? You came to
10 work in 2007 and this happened in the middle of 2008, so in
11 that period of time, were you in the habit of coming back to
12 the office after you left in the afternoon?

13 A. In that period, which period of time are you
14 speaking of?

15 Q. From the time you started in 2007 until Carol died
16 in July of 2008.

17 A. At first when I first got there, I would study
18 sometimes into the evening. That was just for the first
19 several months. Then once I got through all of my exams, no.

20 Q. So when you were licensed, after you became
21 licensed sometime toward the end of 2007, you were not then
22 in the habit of coming back to the office; is that right?

23 A. That is correct.

24 Q. The office didn't have a burglar alarm system; did
25 it?

1 A. No.

2 Q. And it didn't have any surveillance cameras;
3 right?

4 A. Not that I was aware of, but I never really
5 wondered, to be honest.

6 Q. And it's a building in a little office park of
7 similar buildings; right?

8 A. Yes.

9 Q. If you go west of town, you can take Gurley
10 Street, eventually it becomes Thumb Butte Road, you head west
11 out of Prescott; correct?

12 A. Correct.

13 Q. And you go past the old Fry's Shopping Center and
14 around the curve and there's the office park; right?

15 A. Correct.

16 Q. There's some law offices and other offices, a
17 number of buildings in the same area; right?

18 A. Yes.

19 Q. And UBS -- did UBS occupy an entire building?

20 A. No. I believe it was connected to a couple of
21 other offices.

22 Q. Okay. And how many different offices were there
23 in the UBS office in Plaza West, which is the name of the
24 little park? How many different offices were there with
25 doors that closed?

1 A. In the UBS office?

2 Q. Yes.

3 A. Four.

4 MR. SEARS: No other questions, Your Honor.

5 THE COURT: Thank you, Mr. Sears.

6 Mr. Butner, any redirect?

7 MR. BUTNER: No redirect, Judge. Thank you.

8 THE COURT: Ladies and gentlemen, are there
9 questions for this witness?

10 We do have a question. If I could see
11 that.

12 If you would remain seated there for a
13 moment, I may have a jury question. Anymore, Mr. King?

14 Counsel, I think I can see counsel at
15 side bar without the record. If someone requests that, I
16 will do that.

17 (Whereupon, a discussion was held off the record.)

18 THE COURT: Ladies and gentlemen, once again,
19 there are times when the Court cannot ask a question, and you
20 are not to make any inference from that. You are not to
21 guess why that is the case or guess what an answer might have
22 been. You just cannot.

23 And again, I am going to refer all of the
24 jurors to the preliminary instructions and they may elaborate
25 further.

1 But at this time, may Mr. Farmer be
2 excused as a witness, Mr. Butner?

3 MR. BUTNER: Yes, he may, Judge.

4 THE COURT: Mr. Sears?

5 MR. SEARS: Yes, sir.

6 THE COURT: Mr. Farmer, you are excused as a
7 witness at this time, but the Rule of Exclusion of Witnesses
8 applies in this case. This means that you cannot communicate
9 in any way with other witnesses about your testimony or about
10 any other aspect of this case until all witnesses have
11 testified. It is best that you not discuss this case with
12 anyone until the trial is completed. However, you may talk
13 to the attorneys about the case as long as no other witnesses
14 are present.

15 Do you understand?

16 THE WITNESS: Yes.

17 THE COURT: Thank you. You are excused.
18 Please watch your step as you exit.

19 Ladies and gentlemen, as indicated, we
20 are going to recess a bit early. There are some legal
21 matters to attend to. Please remember the admonition. Nine
22 o'clock tomorrow I will ask that everybody be assembled in
23 the jury room. We will start as soon as we can after that.

24 I will can ask that the parties remain a
25 moment. Thank you.

1 (Whereupon, the jury exits the courtroom.)

2 (Whereupon, a discussion was held in
3 open court out of the presence of the jury
4 but is not contained herein.)

5 (Whereupon, at 4:56 p.m. the case was adjourned
6 to resume at 9:00 a.m. on September 10, 2010.)

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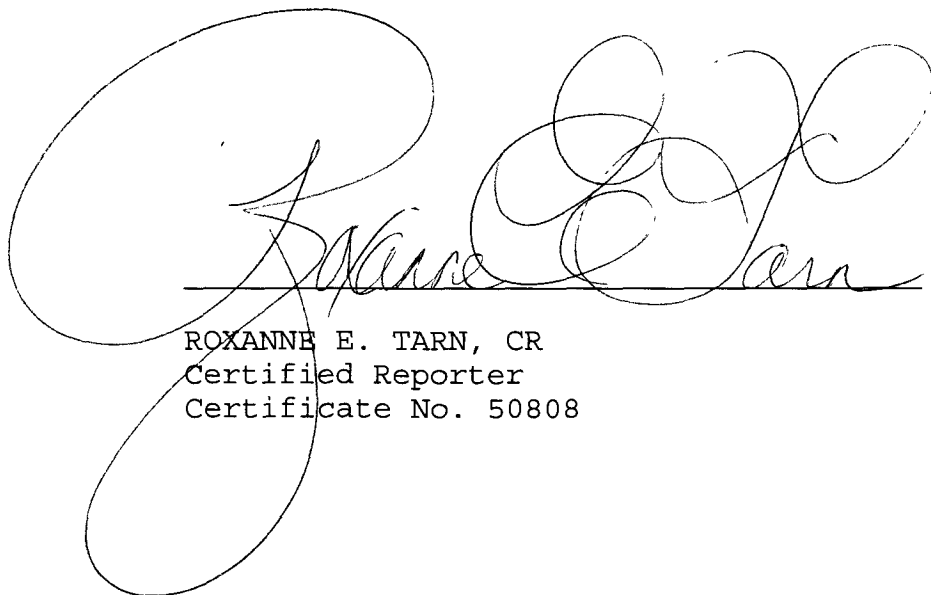
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C E R T I F I C A T E

I, ROXANNE E. TARN, CR, a Certified Reporter
in the State of Arizona, do hereby certify that the foregoing
pages 1 - 173 constitute a full, true, and accurate
transcript of the proceedings had in the foregoing matter,
all done to the best of my skill and ability.

SIGNED and dated this 27th day of October,
2011.



ROXANNE E. TARN, CR
Certified Reporter
Certificate No. 50808